45

Government of Madras

REVENUE DEPARTMENT

G.O. No. 1245, 1st June 1920

Bill

The Mulgeni Rent Enhancement Bill - transferred to the Legislative Department for further action - Government of India addressed.

Pages in the file

(SUBJECT.)

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REVENUE DEPARTMENT

G.O. No. 1245, 1st June 1920

Bill

The Mulgeni Rent Enhancement Bill — transferred to the Legislative Department for further action — Government of India addressed.

READ—the following papers :—

I

Official Memorandum No. 259-B/19-1, Revenue, dated 21st February 1919.

With reference to the correspondence ending with Mr. Vibert's letter Dis. No. 442-D/17 (Confdl.), dated 18th February 1917, in connexion with the Mulgeni Rent Enhancement Bill, the Collector of South Kanara is requested to submit through the Board of Revenue a report whether any *modus vivendi* has since been arrived at between the mulgars and mulgenidars which would render legislation unnecessary. He is also requested to state whether there is any urgent necessity to introduce the proposed measure now

(By order)

F. J. NOBES,
Under Secretary to Government.

To the Collector of South Kanara.
" Board of Revenue (Land Revenue).

II

Proceedings of the Board of Revenue (Land Revenue), Mis. No. 755 (Confdl.), No. 71, dated 14th June 1919.

The Hon'ble Mr. L. T. HARRIS, I.C.S.,
Commissioner of Land Revenue and Income-tax.

Read—the following paper :—

Letter—from J. K. LANCASHIRE, Esq., I.C.S., Collector of South Kanara.
To—the Secretary to the Commissioner of Land Revenue and Income-tax.
Dated—the 2nd May 1919.
No.—Ref. on G.B.R. 302 (Confdl. No. 3).

In reply to Government Memorandum No. 259-B/19-1, dated 21st February 1919, I have the honour to report that no *modus vivendi* has since been arrived at between the mulgars and the mulgenidars which would render legislation unnecessary and I see no prospect of any such amicable settlement. The dispute is of such a nature that it can only be set at rest by explicit legal enactment.

2. The position has recently been complicated by orders passed by my predecessor Mr. Vibert under which he laid down that the word 'land' in section 22 of the Settlement notification for South Kanara district, dated 3rd November 1902, can, in no circumstances, be extended to cover gathered produce of the land in whosoever's custody it may be (copy of order enclosed).

This order arose out of two cases, in one of which gathered products (i.e., rice muras) of mulgeni patta land and in another the movables of the mulgeni tenant were attached for arrears due from the mulgars in respect of mulgeni lands. In the first case, rice muras had been attached from the possession of the sub-tenant who cultivated the land under the mulgenidar and in other movables had been attached from the possession of the mulgeni tenant.

Up till 1918, it had been the practice to take 'land' to be attached for arrears of revenue due on mulgeni land as per paragraph 22 of the Settlement notification, dated 3rd November 1902, to include its products also. Gathered products were not, however, specifically excepted. This was based on the orders passed by Mr. MacIver in 1905 (copy enclosed) and more particularly on the order of Mr. Robertson, Dis. No. 297-R./Ver., dated 13th June 1905 (copy enclosed).

I am in doubt whether Mr. Vibert's interpretation of section 22 of the Settlement notification and rule 14 of the Memorandum for guidance of Revenue Department, dated 18th April 1904, is correct. Rule 14 runs:—

"*Mulgeni holdings.*—When a separate mulgeni patta has been granted at settlement, the assessment cannot be collected by the attachment of the movable property of either the pattadar or the tenant. The pattadar should first be asked to pay the assessment and in the event of his failing to pay the tenant should be requested to pay. In the event of neither party paying the kist, the land should proceeded against without delay."

Section 2 of the Madras Revenue Recovery Act (II of 1864) lays down—

"The land, the buildings upon it and its products shall be regarded as the security for the public revenue."

I doubt whether there was any intention in section 22 of the Settlement notification or in rule 14 of the Memorandum for guidance of Revenue Department, dated 18th April 1904, to whittle away Government's rights in the matter of security for the land revenue as the facilities for collecting it so far as the land, the buildings on it and its products are concerned.

In ordinary parlance the movable property attached under section 8 of the Madras Revenue Recovery Act has a more specialized meaning than the wide legal interpretation, which covers all crops after severance from the land, which is essential to any use of them as security for the revenue.

Up to date, action under the circulars of Mr. MacIver and Mr. Robertson has reduced to very small dimensions the obstruction to the collection work arising from the special concession in the case of mulgeni lands, but at present it is impossible to forecast what trouble may be in store in future from Government being forced to land sale in the case of mulgeni pattas, if this circular of 1918 is allowed to stand.

My opinion is that there was no intention of curtailing Government's rights under section 2 of the Madras Revenue Recovery Act, but merely with regard to household movables, etc., unconnected with the land.

In these circumstances the experience of the past is no guide to what difficulties Government may encounter from mulgeni tenure in future.

I request orders whether my interpretation of section 2 of the Madras Revenue Recovery Act, section 22 of the Settlement notification and rule 14 of Memorandum for use of Revenue Department is correct, or Mr. Vibert's.

I am so convinced of the mischief likely to result from Mr. Vibert's circular that I am cancelling it, but if the Board and Government decide that he was right, I shall republish it. (I enclose a copy of the orders I am issuing, my justification being that if this collection season closes with the order still in force, it will increase future difficulties in collection work.)

In any case I think the deadlock between mulgar and mulgenidar should be terminated by legislation as early as possible.

Resolution—Mis No. 755 (*Confdl. No.* 71), *dated* 14*th June* 1919.

Submitted to Government.

2. The Board considers that the Collector's view as to the necessity for the proposed legislation is sound and supports his proposal that the legislation may be undertaken as early as possible.

3. In regard to the question of selling gathered products of the land held on mulgeni tenure, the Board considers that Mr. Vibert's order is correct. Produce after it is removed from the land must be held to be movable property and the sale of such property is opposed to the directions contained in paragraph 22 of the Settlement notification.

Mr. Lancashire has not stated what troubles he anticipates by the adoption of Mr. Vibert's circular. His order cancelling that circular should clearly be withdrawn.

(True extract)

H. R. Pate,
Secretary.

To the Secretary to Government, Revenue Department.

Enclosures

(1)

Proceedings of the Collector of South Kanara, Dis. No. 297-R./Ver., dated 13th June 1905.

Reference.—Udipi Tahsildar's report Dis. No. 561 D/Rev., dated 4th June 1905, soliciting instructions whether the produce of the lands on mulgeni pattas cannot be distrained for the realization of the land revenue arrears accruing thereon.]

Order.—The word 'land' as used in paragraph 22 of the Settlement notification, dated 3rd November 1902, may be taken to include its products also as the object with which the land was ordered to be proceeded against in the first instance will not be defeated by this course. There is, therefore, no objection to proceed against the products of mulgeni lands for the recovery of the arrears due thereon.

J. H. Robertson,
Collector

(2)

Letter—from S. W. G. I. MacIver, Esq., I.C.S., Acting Collector of South Kanara.
To—Rev. Father A. Macry, s.j., Vicar of the Rosario Cathedral, Mangalore.
Dated—the 22nd August 1905.
No.—Dis. 412 R./Ver.

With reference to your letter dated the 1st instant, I have the honour to state that I do not understand your objection to the Deputy Collector's order. The rule in the case of mulgeni land is that in the first instance the land is to be proceeded against; this of course includes crops standing on the land. The Deputy Collector's order is therefore correct.

(3)

Letter—from S. W. G. I. MacIver, Esq., I.C.S., Acting Collector of South Kanara.
To—Rev. Father A. Macry, s.j., Vicar of the Rosario Cathedral, Mangalore.
Dated—the 1st October 1905
No.—Dis. 500 R./Ver.

Referring to your letter dated 23rd September 1905, I have the honour to state that the land revenue is the first charge on the land and crops growing on it and that no arrangements made between the pattadar and the tenant can affect this.

2. I do not see what bearing the interpretation of words in the Revenue Recovery Act can have on the present question; by departmental order it is directed that in the case of mulgeni leases a separate patta is to issue to the landlord and that for arrears the land is to be proceeded against in the first instance; but for this rule the landlord's other movable property might be proceeded against in the first instance and that is what I understand the rule to prohibit.

(4)

Proceedings of the Collector of South Kanara, Dis. No. 140-R./Rev., dated 29th May 1918.

Read—This office Circular Dis. No. 297-R-Ver., dated 13th June 1905, regarding the collection of arrears of assessment due on mulgeni lands.

Order.—Although the word 'land' as used in paragraph 22 of the Settlement notification, dated 3rd November 1902, includes standing crops, it can under no circumstances be extended to cover gathered produce in whosoever's custody it may be. Gathered products of mulgeni lands cannot, therefore, be attached for the recovery of arrears of revenue due thereon.

2. The order read above is hereby cancelled.

L. Vibert,
Collector.

Circular—from J. K. Lancashire, Esq., I.C.S., Acting Collector of South Kanara.
To—the Divisional officers, Tahsildars and Deputy Tahsildars.
Dated—Mangalore, the 2nd May 1919.
No.—Ref. on G.B.R. No. 302.

Under section 2 of the Madras Revenue Recovery Act (II of 1864) "the land, the buildings on it and its products shall be regarded as the security of the public revenue."

Collection work of assessment on mulgeni pattas will be conducted on the basis of this section of law.

Circular Dis. No. 140-R/Rev., dated 29th May 1918, is cancelled.

III

Official Memorandum No. 820 B/19-1, Revenue, dated 15th July 1919.

In connexion with his report, reference on G.B.R. No. 302, dated 2nd May 1919, on the necessity for the introduction of the Mulgeni Rent Enhancement Bill, the Collector of South Kanara is requested to furnish at an early date specific information as to the number of concrete cases in which difficulties have arisen between mulgars and mulgenidars. It has been suggested that the number of people affected is small.

2. Mr. Lancashire's definition of the term 'land' occurring in paragraph 22 of the Settlement notification approved in G.O. No. 917, Revenue, dated 9th Octob[illegible] 1902, is incorrect and his circular dated 2nd May 1919 should be withdrawn.

(By order)

J. B. Brown,
Under Secretary to Government.

To the Collector of South Kanara.
Copy to the Board of Revenue (Land Revenue).

IV

Letter—from R. H. Ellis, Esq., I.C.S., Collector of South Kanara.
To—the Secretary to Government, Revenue Department.
Dated—Mangalore, the 15th October 1919.
No.—Ref. G.B. 302 Rev.

In reply to Memorandum No. 820 B/19-1, dated 15th July, asking for information as to the number of concrete cases in which difficulties have arisen between mulgars and mulgenidars, I have the honour to state that I have consulted Divisional officers, Tahsildars and District Munsifs on the matter.

2 I append a list of cases in which difficulties have arisen between the parties. I also enclose copies of judgments in cases of the kind reported by the District Munsifs of Udipi and Karkal and copy of a communication from the Karkal Bar Association to the District Munsif, Karkal.

3. The Tahsildar, Mangalore, reports that in that taluk mulgeni holdings represent about 14 per cent of the occupied area of the taluk and that in 30 per cent of these holdings difficulties are likely to arise. The Tahsildar, Kasargode, reports eight cases from that taluk during the last three years. The Divisional officer, Coondapoor, reports that in that division there may be about 500 cases where the rent is less than the settlement assessment and about 2,000 cases in which the settlement assessment is more than the original assessment, but equal to or less than the mulgeni rent in both of which classes trouble is likely to occur between the parties.

4. The District Munsifs, Kasargode and Puttur, report that no case of the kind involving a dispute between mulgar and mulgenidar has been filed in their courts. The District Munsif, Udipi, reports three cases since 1st January last. The District Munsif, Coondapoor, gives seven cases which have been incorporated in the list appended. The District Munsif, Karkal, reports that he has recently come across four cases of the kind, while the District Munsif, Mangalore, gives a list of seven cases in 1904, seven in 1905, eight in 1906, eleven in 1907, thirteen in 1908, five in 1909, one each in 1910 and 1913, two each in 1914 and 1915, four in 1916 and one each in 1918 and 1919.

5. The inquiry has had to be completed within a month and must therefore be regarded as necessarily incomplete. Further, so far as statistics from the courts are concerned, it must I think be considered that the cases actually filed are often of the nature of test cases and probably represent a considerable number of cases whichwere settled on similar lines and never came to court at all.

Enclosures.

(1)

IN THE COURT OF THE DISTRICT MUNSIF OF KARKAL.

Present:

M.R.Ry. P. Narayana Menon Avargal, B.A., B.L.

Thursday, the 26th day of June 1919.

Original Suit No. 123 of 1919.

J. C. Aranha ... ... *Plaintiff*

Kaitan Minguel Lorence Aranha ... ... *Defendant*

This suit coming on for final hearing on Wednesday, the 25th day of June 1919, in the presence of Mr. E. Vasudevayya, vakil for the plaintiff, and of Mr. K. Santhaya Kamath, vakil for the defendant, and having stood over to this day for consideration, the court delivered the following :—

Judgment.

The plaintiff who is the *mulgeni* tenant under the defendant sues to recover from the defendant personally and also by the sale of his *muli* right in the plaint mentioned property Rs. 8-12-7 being the amount of *tirwa* with interest, paid by the plaintiff over and above the rent due to the defendant in the years 1916 to 1918.

2. The main allegations in the plaint are these: The plaintiff is a *mulgeni* tenant of the plaint mentioned properties belonging to the defendant and included in his *patta* No. 24 of Chitrapur village. He is liable to pay in all a *mulgeni* rent of Rs. 10-0-0 and As. 5 for cesses per annum to the defendant. The Government assessment of the said *mulgeni* lands is more than the rent payable by him to the defendant. As the defendant did not pay the assessment from 1916 onwards, it was collected by the Government officials from the under-tenants of the plaintiff and he had to give credit to the assessment paid by the tenants from the rents payable by them. As the defendant did not pay the amounts paid by the plaintiff through his tenants with interest thereon at 12½ per cent per annum in spite of the plaintiff's notice dated 18th June 1917 demanding payment, he (the plaintiff) is entitled to recover the excess sum due to him after setting off the rent due to defendant towards the amount paid as assessment, and he is entitled to recover the said sum and interest thereon personally from the defendant and on the responsibility of the defendant's *muli* right in the suit properties.

3. The defendant admits that the rent payable by plaintiff is Rs. 10 per annum but does not admit the correctness of the amount payable for cesses. He then alleges that the *tirwa* of the properties was increased on account of the improvement effected by the tenants and by other persons, and that he does not admit that the assessment is more than the rent, that it was paid by plaintiff's tenants and credited to them in the rents payable by them. Finally he contends that he is not liable to pay the assessment paid by plaintiff's tenants, that the plaintiff is not entitled to claim interest, that the plaintiff is not in any case entitled a decree on the responsibility of the properties, and that the suit is not maintainable on the small cause side.

4. The following issues were framed by my predecessor :—

I. Whether the *tirwa* was paid in the suit years by plaintiff or his agents ?

II. What is the correct amount due to plaintiff ?

III Whether plaintiff can charge interest ?

IV. Whether the plaintiff is entitled to the charge claimed ? If not, is the suit maintainable on the regular side ?

V. To what relief is plaintiff entitled ?

5. *First issue.*—This is a suit by a *mulgeni* tenant against his landlord for the recovery of assessment paid by him. The landlord is admittedly the *pattadar* and he is liable to pay the Government assessment. The question for decision is whether the plaintiff or his agent paid the assessment in the years 1916, 1917 and 1918. The plaintiff has examined his *chalgani* tenant, *P. W.* 1 to prove that she paid the assessment of the suit years. She deposes that she paid the assessment in two years when the village officials threatened to distrain her movables and obtained receipts from them. The plaintiff has produced *Exhibits A*, *A*-1 *to* *A*-3 which are receipts granted by village officials to *P. W.*1 for the payment of assessment. She has proved them. It is seen from *Exhibits A*, *A*-1 and *A*-2 that

she paid the assessment in order to avoid distraint. These *Exhibits* relate to the payment of assessment of the years 1916 and 1917. *Exhibit A*-3 is the receipt for the payment of assessment of 1918. The plaintiff has given credit to these payments in the rent payable to him by *P.W.* 1. *Exhibits* B and B-1, the receipts passed by the plaintiff to *P.W.* 1 for the payment of the rents of the suit years show that he has given credit to the amount paid by *P.W.* 1 as assessment. The defendant does not say that he has paid the assessment of the suit years. It is admitted that the *mulgeni* holding appertains to *patta* No. 24 standing in the name of the defendant. It is also evident that *Exhibits A* to *A*-3 relate to the payment of assessment for the properties included in *patta* No. 24. The payment of *tirwa* by the plaintiff's tenant during the suit years for the holding No. 24 standing in the name of the defendant is therefore proved. I find the first issue in the affirmative.

6. *Second issue.*—It is seen from *Exhibits A* to *A*-3 that plaintiff's tenant paid Rs. 12-10-8 in 1916, Rs. 12-11-0 in 1917, and Rs. 12-11-0 in 1918 as assessment for the *mulgeni* lands in *patta* No. 24. It is also seen from *Exhibit C* that the rent and cesses payable to defendant by plaintiff amount to Rs. 10-5-0 per annum. The plaintiff has deducted the rent and cesses payable by him to defendant from the assessment and has claimed only the balance due to him in each of the said years. I find that the amount claimed in the plaint is correct.

7. *Third issue.*—The plaintiff has paid the assessment of the suit years through his tenant for and on behalf of the defendant and the defendant is liable to reimburse the plaintiff the amount paid by him. In such a claim the plaintiff is in my opinion entitled to charge interest on the amounts paid by him for the defendant. The plaintiff was allowed interest on the assessment paid by him for the defendant in the previous years at 12½ per cent per annum, the customary rate of interest prevailing in this district (vide *Exhibit D*). I find that the plaintiff is entitled to charge interest.

8. *Fourth issue.*—The plaintiff claims a charge on the defendant's *muli* right in the plaint mentioned properties for the amount of assessment paid by him on behalf of the defendant. The parties have fought mainly on this issue. The defendant contends that the plaintiff cannot claim a charge on the *muli* right in the suit properties and relies upon section 35 of the Madras *Revenue* Recovery Act. Section 35 simply enacts that the assessment paid by the tenant for his landlord can be deducted by the former from the rent payable by him. It does not create a charge on the landlord's interest in the property. But it is seen from I.L.R., 11 Mad., 452, at page 459 that the section 35 of *Revenue* Recovery Act is not exhaustive. The plaintiff's vakil relies on I.L.R., 26 Mad., 686, to show that the tenant can claim a charge on the landlord's interest for the assessment paid by him and refers me to the observations at page 711 wherein it is stated "that any person who had such an interest in the land as entitled him to pay the revenue due to Government and did actually pay it was entitled to a charge on the land, as against all the persons interested therein for the amount of the money so paid". I am sure that these observations cover the case of a *mulgeni* tenant who paid the assessment for and on behalf of his landlord. I hold that the plaintiff is entitled to a charge on the defendant's *muli* right in the suit property. In the view I have taken of the plaintiff's right to claim a charge it follows that the suit is maintainable on the regular side. (IV issue).

9. *Fifth issue.*—In the result the plaintiff is entitled to a decree for the plaint amount and costs with interest on the former from the date of plaint and on the latter from this date till payment at 6 per cent per annum against the defendant personally and by sale of his *muli* right in the plaint mentioned properties. The defendant is given one month's time for payment. He is ordered to bear his own costs.

Pronounced in open court, this 26th day of June 1919.

P. Narayana Menon,
District Munsif.

The following documents were filed :-

For Plaintiff.

A	11th March 1916	... ...	*Tirwa* receipt obtained by Manikka Minezes Bai.
A-1	14th April 1916	... ...	Do. do.
A-2	13th March 2nd April 1917	... ...	Do. do.
A-3	13th March 1918	... ...	Do. do.
B	4th April 1917	... ...	Receipt for rent of 1916 and 1917 passed by plaintiff to Manikka Minezes Bai.
B-1	10th April 1918	... ...	Receipt for rent for 1918.
C	26th September 1915	...	Certified copy of the written statement filed by the defendant in S.C. suit No. 326 of 1915 on the file of this Court.
D	31st March 1917	... ...	Certified copy of the judgment in S.C. suit No. 326 of 1915 on the file of this Court.
E	18th June 1917	... ...	Registered notice sent by plaintiff's pleader to the defendant.

The following exhibit was filed for defendant.

I 28th June 1917 ... ... Draft of the registered notice sent by defendant's pleader to plaintiff's pleader.

The following witness was examined.

For Plaintiff

Manikka Minezes Bai.

P. Narayana Menon,
District Munsif.

(2)

IN THE COURT OF THE DISTRICT MUNSIF OF KARKAL.

Present

M.R.Ry. T. Bhujanga Rao Garu, M.A., B.L.,

Saturday the eighth day of March One thousand nine hundred and nineteen.

Original Suit No. 578 of 1918.

Between

Kavu Hengsu ... ... *Plaintiff.*

and

1. Akkamma Heggadthi ... ...
2. Mariakka Heggadthi ... ... } *Defendants.*
3. Akku Heggadthi ... ...
4. Madhava Prabhu ... ...

This suit coming on for final hearing on Tuesday, the 4th day of March 1919, in the presence of Mr. E. Vasudevaya, vakil for the plaintiff, of Messrs. K. Venkatesha Pai and K. Laxumana Pai, vakils for the 1st defendant, of Mr. K. Santhaya Kamath, vakil for defendants 2 and 3, and of Mr. K. Laxumana Kudva, vakil for the 4th defendant, and having stood over to this day for consideration the Court delivered the following :—

Judgment.

Suit to recover from defendants 1 to 3 personally or from such of the defendants as the Court might hold liable and also on the responsibility of their respective rights in the plaint mentioned property and also from the family assets of defendants 2 and 3, Rs. 227-7-9 being the amount of *tirwa*, including interest which the plaintiff paid in the years 1916 to 1918.

2. The plaintiff's case is as follows :—Fourth defendant's grandfather Laxuminarayana Prabu obtained a sub-*mulgeni* of the plaint mentioned property in the year 1852 from the original mulgeni tenant one Mahalinga Shetty. The plaintiff's ancestor Doomanna Shetty obtained the same on *vala-mulgeni* from the said Laxumana Prabhu. The muli right over the said property had been purchased from the mulgars Raya Kamthi and others in the year 1896 by the late Appu Heggde, husband of the 1st defendant, when he was the *ejaman* in the family of defendants 2 and 3. The plaintiff understands that though the patta of the said property was granted by the revenue authorities in the name of one Koti Pujari, he did not assert any sort of right in the property and relinquished the patta, that the 1st defendant got the said patta entered in her name, and that as the 1st defendant's husband Appu Heggde died without creating any sort of right in the 1st defendant in writing, the muli right over the said property still rests in the family of defendants 2 and 3. Chinnaya Naika who was the *ejaman* in the plaintiff's branch of the family executed in favour of plaintiff a registered *kulasapatra* on 7th April 1916. Under it the plaintiff acquired the right of management of the plaint vala-mulgeni property. As neither the pattadar nor the mulgars nor plaintiff's immediate landlord paid the Government assessment in the suit years, the same was collected from the plaintiff and her *chalgeni* tenants. In the suit filed by the 4th defendant for rent he did not give any deduction for the *tirwa* payments so made. When defendants 1 to 3 were often asked to pay plaintiff the amount so paid for *tirwa*, they did not do so. Hence this suit has been filed. As the 4th defendant has got an interest in the plaint mentioned property he has been also impleaded in the suit.

3. The 1st defendant states that she has no right of any sort in the plaint mentioned property nor is it in her enjoyment; that the 1st defendant is not liable to pay the *tirwa* of the said property; that the 1st defendant did not get entered in her name the *patta* of the plaint mentioned property and she is not aware that the *patta* stands in her name; that she did neither apply to the revenue authorities for change of *patta* in her name nor did she make any statement before the revenue authorities to that effect; that in any case the 1st defendant is not personally liable for plaintiff's claim; that she has no objection if a decree is passed on the responsibility of the plaint mentioned property; that the *kulasapatra* relied upon by the plaintiff

is not valid and the plaintiff is not entitled to sue on the strength of the said *kulasapatra*; that the plaintiff did not pay the *tirwa* in the suit years; that the plaintiff is not entitled to claim interest as there is no contract for the same, and the rate thereof claimed is also excessive; that the 1st defendant is not a necessary party to the suit; and that plaintiff's suit should be dismissed with costs.

4. The defendants 2 and 3 state that they are not necessary parties to this suit; that defendants 2 and 3 are not aware of the sale in the name of Appu Heggde; that the sale was not for the benefit of their family; that defendants 2 and 3 are not liable to pay the *tirwa* of the plaint mentioned property as the *patta* does not stand in their name; that the plaintiff is not entitled to claim interest as there is no contract for the same and the rate thereof claimed is also excessive; that defendants 2 and 3 are not personally liable for plaintiff's claim; that their family assets also are not liable; and that plaintiff's suit should be dismissed with costs.

5. The 4th defendant states that the plaintiff is not right in impleading him in this suit; that plaintiff's claim as against him is barred as res judicata by reason of the decision in O.S. No. 423 of 1917 on the file of this Court filed by him against the plaintiff for arrears of rent; that as the *patta* of the suit property stands in the name of the 1st defendant, the plaintiff is entitled to recover the suit amount on the charge of the 1st defendant's *muli* right in the plaint mentioned property; that in O.S. No. 251 of 1915 on the file of this Court filed by the 4th defendant against Chinnaya Naika, the plaintiff's predecessor-in-title, it was decided that Chinnaya Naika was not entitled to get credit for the *tirwa* paid by him; that the plaintiff who was fully aware of this fact is not entitled to sue the 4th defendant; and that plaintiff's suit as against him should be dismissed with costs.

6. The issues are—

I. Whether the patta in respect of the suit property stood in the suit years in the name of 1st defendant.
II. If so, whether 1st defendant is not personally liable.
III. Whether plaintiff is entitled to a charge on the plaint property.
IV. Whether defendants 2 and 3 have been rightly impleaded.
V. Whether 4th defendant has been rightly impleaded.
VI. Whether plaintiff is entitled to charge interest and if so, at what rate.
VII. Whether the claim against 4th defendant is barred as res judicata.
VIII. Whether the payments of assessment alleged by plaintiff are true.
IX. Whether they were voluntary payments and if so, the suit is not maintainable.
X. To what relief is plaintiff entitled.

7 *Issues* 1 *and* 2.—The ancestor of one Raya Kamthi was the original *mulgar*. That ancestor gave a *mulgeni* to one Mahalinga Shetty who according to plaintiff gave a sub-mulgeni to 4th defendant's grandfather Laxuminarayana Prabhu who in his turn gave a *vala mulgeni* to plaintiff's ancestor Doomanna Naika. This is plaintiff's account. If so, plaintiff would be the holder of an under-lease under a *sub-mulgeni* tenant. In a former suit 4th defendant said that Mahalinga Shetty sold his right to Laxuminarayana Prabhu in 1852. If so plaintiff would be himself a *sub-mulgeni* tenant.

8. Raya Kamthi and his brother sold their *muli* right in the year 1896 to one Appu Heggde, deceased husband of 1st defendant, and brother of defendants 2 and 3. In the sale-deed (*Exhibit L*) Appu Heggde is asked to collect the rents from the sons of Laxuminarayana Prabhu, as if they were mulgeni tenants and not sub-mulgeni tenants. Hence the version in the plaint as Mahalinga Shetty having granted a *mulgeni* to Laxuminarayana Prabhu is not likely to be correct.

9. Be this as it may, the history about the *patta* of the suit property is curious. At the settlement the *patta* should have been issued in the name of Appu Heggde who had purchased the *muli* right in 1896. But somehow it was issued in the name of one Koti Pujari. Appu Heggde was himself the potail; and as the *tirwa* had been enhanced he seems to have somehow managed to get the *patta* issued in the name of Koti Pujari. Appu Heggde died five years ago. The *patta* continued in the name of Koti Pujari till December 1916, though some suits had been filed against Koti Pujari in which he said he had nothing to do with the land. In July 1916, the 4th defendant seems to have made a statement (Exhibit I) to the Karkal Division Revenue Inspector; and apparently on its strength the *patta* was changed in the name of Appu Heggde's widow, the 1st defendant, though defendants 2 and 3 are members of his family —see Exhibit II. In Exhibit I the 4th defendant said that Appu had sold his *muli* right to the 1st defendant. But no sale-deed is produced nor any copy of the statement made by 1st defendant asking that the *patta* should be in her name. First defendant's son (D.W. 1) says that she was not examined before the *patta* was changed in her name; that her husband did not sell to her the *muli* right in the suit property and that the transfer of *patta* was made without her knowledge or consent. First defendant has produced an endorsement (Exhibit III) which shows that there is nothing in the taluk office records to show that first defendant was examined before the *patta* was transferred to her name.

10. In the present suit defendants 2 and 3 do not say that the *muli* right in the suit property was conveyed by Appu Heggde to his wife, the first defendant. Hence first defendant's story that she is not the owner of the *muli* right and never wanted the *patta* must

be true. The potailship must now be in the family of defendants 2 and 3. Hence the potail must have managed to see the *patta* was transferred to first defendant's name. Defendants 2 and 4 are not apparently anxious as to in whose name the *patta* stands, because the potail collects the *tirwa* by threat of distraint from the plaintiff.

11. I hold on the first issue that in the first of the suit years (1915–16) the patta was not in first defendant's name and that in the other years it was. On issue 2 I hold that the *patta* was issued in her name without her knowledge or consent; that she did not accept it; that the *patta* being a mere bill issued by the revenue authorities the first defendant cannot be made personally liable without proof that she had accepted the *patta*; and that such proof being wanting in the present case she is not liable.

12. *Issue* 4.—Defendants 2 and 3 have admittedly an interest in the muli right over which a charge is claimed. They have been rightly impleaded.

13. *Issue* 5.—The 4th defendant being the holder of a mulgeni interest is a proper party, though not a necessary party. I hold he has been rightly impleaded.

14. *Issue* 6.—Plaintiff has claimed interest at 12½ per cent. Reimbursement in cases such this is an equitable claim. Hence interest is usually allowed. But I allow interest only at 6¼ per cent.

15. *Issue* 7.—Fourth defendant is not the pattadar and cannot be made liable. But there can be no res judicata as in the suit filed by 4th defendant the plaintiff was not permitted the right of deducting the *tirwa* from the rent which is not the right claimed in this suit.

16. *Issues* 8 *and* 9.—The payments are proved by Exhibits H, J and K series which also show that every payment was made after threat of distraint. I hold the payments are true and were not voluntary.

17. *Issue* 3.—As I hold that the registered *pattadar*, the 1st defendant, is not personally liable, to refuse a charge to the plaintiff is to refuse justice to her.

18. In the case of co-owners and co-sharers compelled to pay the *tirwa* to preserve the entire property, a charge is allowed in Madras on the shares of the others—see XXVI Mad., page 686; XXXVI Mad., page 493.

19. In the case of a lessee who was compelled to pay the tirwa on land not included in his lease, he was given a charge on such land in VI Cal., page 549, which was quoted with approval in XXVI Mad., page 686.

20. In XXVI Mad., page 686, at page 711, Bashyam Ayyangar J., after referring to a dictum laid down by the Privy Council in XI M.I.A., page 241, made the following observation: "The principle indicated by the dictum is that any person, who had such an interest in the land as entitled him to pay the revenue due to Government and did actually pay it, was thereby entitled to a charge on the land, as against all persons interested therein, for the amount of the money so paid". The words "any person who had such an interest in the land as entitled him to pay the revenue due to Government" must certainly include a sub-mulgeni tenant or a vala-mulgeni tenant whose interest amounts to a substantial interest of a proprietorial nature. (In XXX Mad., page 35, no question of salvage lien arose.)

21. Considering the observations in XXVI Mad., page 686, at page 703, and the restricted nature of the charge conferred in analogous cases by section 35 of the Revenue Recovery Act (which according to XI Mad., page 452, at page 459, is not exhaustive), I can declare a charge only on the muli right owned by Appu Heggde.

22. *Issue* 10.—Plaintiff will recover Rs. 209 and proportional costs and subsequent interest at 6 per cent on Rs. 209 on the charge of the muli right in the properties covered by patta No. 94 owned by the family of defendants 2 and 3. Defendants will bear their own costs.

Pronounced in open Court, this 8th day of March 1919.

T. Bhujanga Rao,
District Munsif.

Plaintiff's documents.

A	29th May 1858	...	Mulgeni chit executed by Laxuminarayana Prabhu to Doomanna Shetty.
B	5th October 1912	...	Certified copy of the decree in O.S. No. 160 of 1912 on the file of this Court.
C	14th August 1914	...	Certified copy of the judgment in O.S. No. 70 of 1914 on the file of this Court.
D	8th March 1915	...	Certified copy of the judgment in A.S. No. 425 of 1914 on the file of the District Court.
E	10th January 1916	...	Certified copy of the judgment in O.S. No. 251 of 1915 on the file of this Court.
F	7th April 1916	...	Registered kulasapatra executed by Chinnayya Naika and another to plaintiff and others.
G	12th September 1917	...	Certified copy of the judgment in O.S. No. 423 of 1917 on the file of this Court.

Plaintiffs documents.

H	16th March 1917	...	Sale notice issued by the Tahsildar of Karkal.
J	17th March 1917	...	Sale notice issued by the Head Accountant of the Karkal Taluk office.
K	12th March 1914 to 23rd May 1916.		Tirwa receipts passed by the Revenue officers.
K-1	14th March 1917	...	Do. do.
K-2	30th March 1917	...	Do. do.
K-3	16th April 1917	...	Do. do.
K-4	13th May 1917	...	Do. do.
K-5	23rd March 1918	...	Do. do.
K-6	12th April to 12th May 1918.		Do. do.
L	25th February 1896	...	Registration copy of the sale deed executed to Raia Kamthi and another to Appu Hegade.
M	Fasli 1324	...	Certified copy of patta No. 94 of Kukkundur

Defendant's documents.

I	12th April 1916	...	Certified copy of the statement recorded by the Revenue Inspector of Karkal division.
II	6th December 1916	...	Certified copy of the order passed by the Deputy Tahsildar of Karkal in K.R. No. 54 of 1326.
III	7th January 1919	...	Endorsement order given by the Tahsildar of Karkal to the first defendant.

Defendants' witness.

Sheenappa Hegade.

T. BHUJANGA RAO,
District Munsif.

(3)

IN THE COURT OF THE DISTRICT MUNSIF OF UDIPI.

WEDNESDAY THE TWENTY-THIRD DAY OF JULY ONE THOUSAND NINE HUNDRED AND NINETEEN.

Present

M.R.Ry. M. MANJUNATHA RAO Avargal, B.A., B.L

Original Suit No. 84 of 1919.

Between.

1. M. Krishna Bhatta ... ... *Plaintiffs.*
2. P. Krishnaveni Amma ... ...

and

Guru Rao ... ... *Defendant.*

This suit coming on for final hearing on Tuesday, the 22nd day of July 1919, in the presence of Mr. B. Bhujanga Rao for plaintiff, and of Mr. K. Ramanatha Pai for defendant, and having stood over to this day for consideration, the court delivered the following:

JUDGMENT.

Plaintiffs sue to recover from defendant personally and on the charge of defendant's inte[illegible] in the plaint property Rs. 70-7-0, being the portion of assessment payable by defendant in respect of the plaint property for the years 1915 to 1918 at Rs. 15-8-0 per annum with interest thereon at 6¼ per cent.

2. It is alleged in the plaint as follows: Plaint property is a portion of a property belonging to the *muli* right of defendant's family and the *muli* right appertained to the several rights of eleven branches of defendant's family. The *mulgeni* right in the plaint and other properties had been purchased from the then tenants by one Srinivasa Rao, one of the *mulidars* who thereafter sold all his *muli* and *mulgeni* rights to Gururayacharya, the late husband of second plaintiff. A portion of the plaint property was sold by second plaintiff to first plaintiff and now the whole plaint property is in the enjoyment of plaintiffs as *mulgeni* tenants and fractional landlords. Defendant has purchased the *muli* right of six branches and is now entitled to get an annual profit of 78¾ seers of *beltige* rice and Rs. 3-2-0 in cash. The total profits secured to all the *mulidars* is three *kaide muras* of *tholsalu* rice and Rs. 4-0-1 in cash and two vegetable loads. The portion payable to the other *mulidars* is 47¼ seers of rice and Re. 1-6-1 in cash. At the time of the *mulgeni* lease of the plaint property the assessment of the holding was Rs. 24-9-2. Now the assessment of plaint property alone, even excluding punja recently assessed, is Rs. 46-6-0 and cess thereon is Rs. 4-5-0. Hence the assessment payable by the *mulidars* is Rs. 48-8-2. Hence the increased assessment of the plaint property is Rs. 23-15-0.

The whole assessment of the plaint property has been paid by plaintiffs in the plaint years 1915 to 1918. Hence defendant is liable to contribute rateably to his interest in the *muli* right the increased assessment of the plaint property. According to defendant's interest, he is liable to contribute $\frac{13}{216}$ share of the increased assessment. Hence defendant is liable to contribute Rs. 15-8-0 a year. As the plaintiffs have paid the assessment for the benefit of defendant also, and as defendant has even recovered a decree in S.C.S. No. 965 of 1918 for his share of *mulgeni* rent without giving credit for the plaint charge plaintiffs are entitled to recover from defendant his share of the enhanced assessment personally and on the charge of his interest in the plaint property, with interest at 6¼ per cent from the due dates.

3. Defendant contends that, agreeably to the terms of the *mulgenichit* the *mulgeni* tenant is not entitled to recover anything from defendant in respect of the assessment paid by the tenant that plaintiffs have further been the *pattadars* of the plaint property, that plaintiffs are not, in consequence entitled to any contribution, that plaintiffs are likewise estopped from claiming any contribution from the defendant, that even otherwise the tenant is liable to bear the enhanced assessment which is due to the improvements worked on the land by him, and that plaintiffs are not entitled to claim any interest.

4. The issues are—

I. Is plaintiff entitled to any and what contribution from the defendant in respect of the assessment alleged to have been paid by him?

II. Is plaintiff estopped from claiming any contribution from the defendant.

III. What interest, if any, is plaintiff entitled to?

IV. What relief is plaintiff entitled to?

5. *Issues I and II.*—The defendant is the *muligar* of the suit property. The plaintiffs purchased the *mulgeni* interest of the whole property of which the suit property forms a part and the *muli* right of some of the co-sharers of the defendant. The plaintiffs sue for contribution for the defendant's share of the enhanced assessment paid by them. The defendant had sued the plaintiffs for his *mulgeni* rent in S.C.S. No. 965 of 1918. The plaintiffs claimed to set off the enhanced assessment paid by them towards the rent. The plaintiffs' claim was disallowed (vide exhibit XII). The plaintiffs now seek to recover the enhanced assessment paid for the defendant's share. The plaintiffs' predecessor is the registered *pattadar*. As such the plaintiffs are liable to pay the assessment to Government. Therefore the plaintiffs are not entitled to recover the same from the defendant. The plaintiffs in their sale-deeds *exhibits I* and *II* undertook to pay the assessment. Under exhibit B the original *mulgeni* tenant himself had undertaken to pay the assessment and pay the balance of profits as rent to the *mulgar*. The plaintiffs' pleader contends that though under the law the *pattadar* is liable to pay the assessment the *mulgeni* tenant is liable to pay only the assessment as it then existed at the time of the *mulgeni* and he relies upon *Narayana Ramachandra* v *Manager. Nagappa* 8, Indian cases 411. That case turned upon the construction of the *kabuliyat* there and the *muligar* had undertaken to pay the assessment in that case. In this case the plaintiffs who are the mulgeni tenants have undertaken to pay the assessment and pay the net profits as rent to the *mulgar* and are themselves the *pattadars*. In either view of the case, the plaintiffs themselves are liable to pay the assessment. Even from an equitable point of view, the plaintiffs only are liable to pay the enhanced assessment because the rent payable to the landlord is less than the enhanced assessment. Therefore the plaintiffs have no case either in law or in equity. I find these issues against the plaintiffs.

6. *Issue III.*—The plaintiffs are entitled to claim interest on the amount paid by them as assessment in a suit for contribution, 33 M.L.J. short notes, page 13.

7. *Issue IV.*—In the result, the plaintiffs' suit stands dismissed with costs.

Pronounced in open court, this 23rd day of July 1919.

M. MANJUNATHA RAO,
District Munsif.

Plaintiffs' exhibits.

A. 31st May 1904. Settlement patta No. 102 of Badagabettu village granted to Gururayacharya, husband of second plaintiff.

B. 2nd Palganna Babul of Shidlesthi (9th March 1860). Kayangeni Edumudi executed by Ummaya Shethi and his elder sister Uvamma in favour of Thammaya and eleven others.

Defendant's exhibits.

I. 30th July 1897. Registration copy of sale-deed executed by Srinivasaraya and his two sons in favour of Gururayacharya.

II 28th September 1914. Registered deed of sale executed by second plaintiff in favour of first plaintiff.

III. 14th August 1916. Registered deed of sale executed by Puttraya in favour of first plaintiff.

IV. 7th March 1911. Registered will left by Gururayacharya.

V. 16th August 1918. Kayangeni receipt passed by Nagappaya to first plaintiff.

Defendents exhibits—cont.

VI. 18th April 1916. Money order receipt of Nagappaya for Rs. 5-8-0 remitted by first plaintiff.

VII. 20th October 1917. Money order receipt of Nagappaya for Rs. 2-9-0 remitted by first plaintiff.

VII. 27th October 1909. Letter addressed by Gururayacharya to defendant.

IX. 10th August 1911. Letter addressed by Ramakrishnacharya to defendant.

X. 2nd August 1913. Post registered card addressed by second plaintiff and her son to defendant.

XI. Money order coupon for Rs. 15-5-0 remitted by Hariappa Shanbhaga for Gururaya Acharya.

XII. 19th December 1918. Certified copy of judgment in S.C.S. No. 965, on the file of this court.

M. Manjunatha Rao,
District Munsif.

Plaintiffs' witness.

Mardithaya Krishna Bhatta (first plaintiff).

Defendant's witnesses.

Nil.

(4)

Letter—from the Secretary, Bar Association, Karkal.
To—the District Munsif, Karkal.
Dated—the 10th October 1919.

In compliance with your notice on Reference No. 820-B/19-1, I am directed by the Bar Association, Karkal, to offer the following remarks.

2. We are requested to cite typical concrete cases of hardship during the last year as a consequence of the enhancement of tirwa on mulgeni holdings and the want of any legislative enactment fixing the incidence of the enhanced assessment between the mulgars and the mulgeni tenants.

3. The reference recites that it has been suggested that the number of cases of hardship are not many. The members of this association are unanimously of opinion that the suggestion is unfounded and cannot be supported by facts. Legislation for setting the matter right has been anxiously expected ever since the decision of the Madras High Court in *Vidyapurna Thirthaswami* v. *Ugyannu*. This expectation has been continually nursed by successive Collectors of the district representing that a Bill with the object was under consideration of the Government and would be passed into law as soon as convenient. The replies of the Government to local memorials and interpellations from local representatives also held out this hope In these circumstances the members of the Bar in the pleadings before the courts had to proceed in cases which came before the courts on the basis of the High Court decision and did not attempt to bring the incidence of assessment in issue. In a much larger number of cases, the members of the Bar advised the parties to postpone suits for rent till the expected Bill was passed.

The pleadings in the courts therefore generally show that the total amount of tirwa was altogether borne by the mulgar or was given credit to the tenant by the mulgar often with a reservation that he should not be prejudiced by any change in the law subject to the reservation. Most of the tenants have not yet filed suits against mulgars partly because they are advised as stated above and partly as such a course was patently iniquitous. Some tenants however have had the hardihood to file suits and obtain decrees for tirwa paid against the mulgar though the mulgars have not collected a single pie of rent. A few of such cases have been cited below as typical instances.

The Association feels it necessary to remove a possible misapprehension regarding the extent of occupied land held under mulgeni tenure in the district. The revenue registry or adangals prepared at Settlement show only a small fraction of the number of mulgenis. There are very many mulgenis which are not entered in the Settlement register which have come to the notice of the court and the practitioners as admitted mulgenis. The Association believes that this is due to the ignorance of the tenants and the fact that the last survey and settlement were the first in the district and the people did not realise the scope and the object of these operations.

The members of the Association can of their own knowledge cite hundreds of cases in which the mulgar receives no rent whatsoever and the tenant enjoys the holding on payment of tirwa also.

Several members of the Bar are mulgeni tenants who are in enjoyment of their mulgeni properties without payment of any rent under the protection of the High Court decision. The Karkal Dhansale Mutt of the Jain community with its patta in the name of Kusuranddamma and owning properties paying a tirwa of Rs. 800 has been totally deprived of its income by the enhancement of assessment. Not only has the endowment not recovered any rents but it has further been threatened with a number of suits by its mulgeni tenants who have paid tirwa in excess of the amount of rent payable by them. There are many more such cases where the settlement assessment exceeds the amount of rent. In certain cases the assessment is double or treble the amount of rent due.

For the reasons stated above, many specific cases of suits filed by tenants against mulgars from the beginning of the present calendar year cannot be given. Some of them are still pending. The number of suits is not a correct index of the extent of hardships and difficulties arising between mulgars and mulgenidars as typical instances of such difficulties, the Association refers to the following cases.

The Association believes that it will also be useful to inquire into the number of cases in which the mulgar out of sheer despair has been compelled to surrender the patta. The Association begs also to refer to a number of cases in which the mulgar unwilling to surrender his interest has attempted to get round the tenant and charge on him a portion of the enhanced burden in various ways for example by withholding receipts for rents received, by setting up frivolous claims against the tenant or by stirring up vexatious civil and criminal litigation.

List of suits.

1. O.S. No. 41 of 1917.	Tukra Shetti, plaintiff *v.* Kundar Subraya, defendant.	
2. S.C. No. 424 of 1919.	Do.	
3. O.S. No. 123 of 1919.	J. C. Aranna *v.* K. M. L. Aranna.	
4. O.S. No. 535 of 1918.	Salappa Mudartha *v.* Krishna Pai.	
5. O.S. No. 578 of 1918.	Kavu Shedthi Akkamma Heggadthi.	
6. O.S. No. 442 of 1919.	Anthony Mothi Babu Shetti.	
7. S.C. No. 404 of 1919.	Gummanna Hegade Deva Pai.	
8. O.S. No. 168 of 1919.	A. J. Nazareth, plaintiff Muhammad Isaac Saheb, defendant.	
9. O.S. No. 292 of 1919.	Ramanna Hegde *v.* Achu Hegde.	Indirectly in issue.
10. S.C.S. No. 127 of 1918.	A. Subba Rao *v.* Srinivasa Naika.	
11. O.S. No. 484 of 1918.	Chandpira Sahib *v.* Ramanna Hegde.	
12. O.S. No. 220 of 1919.	Sanur Krishna Bhatta *v.* Ramanna Hegde.	
13. O.S. No. 255 of 1919	Ramakrishna Bhatta *v.* Mariakke Heggadthi.	

14. A list of cases will be filed subsequently.

K. L. Kudva,
Pleader.

(5)

Statement showing instances of concrete cases filed in the District Munsif's Court of Coondapoor in which difficulties have arisen between mulgars and mulgenidars as regards payment of assessment to Government.

Number of the suit.	Plaintiff.	Defendants.	Description of mulgeni holdings.				Nature of the suit.	How disposed of.
			Village.	Patta number.	Settlement assessment.	Revenue assessment, if known.	Mulgeni rent due to the mulgars.	
Original suit No. 392 of 1919.	Original suit No. 267 of 1918.	Original suit No. 246 of 1915, of 1917.	Original suit No. 52 of 1916.		Original suit No. 67 of 1916.	Original suit No. 157 of 1914.	Original suit No. 136 of 1907.	
Subraya Upadya (mulgar and pattadar).	Subrayacharya Nagi and others (sub-mulgeni lessee).	(mulgenidars).	Gota Venkatachala (mulgeni lessee).		Maligai Nagappaya (sub-lessee).	Subraya Adiga, assignee of defendants 1 and 2 (intermediate mulgeni lessees in the aforesaid suit).	dar and mulgar).	Venkataramann Aithala (patta-
Krishna Udpa (Artha-mulgeni lessee).	Beligai Subba Rao and others (mulgars and pattadars).	Krishnamma Shetathi and thirteen others (mulgars and pattadars).	Virabhadra Varuna and five others (joint pattadars and mulgars).		1. Venkataramana Aitala (the pattadar and mulgar and plaintiff in O.S. No. 135 of 1907). 2. Subraya Adiga (plaintiff in O.S. No. 157 of 1914).	Maligai Nagappaya—3rd defendant in the aforesaid suit (sub-mulgeni lessee).	1. Nagappa, (mulgeni lessee). 2. Subraya Nagappaya (mulgeni sub-lessee).	3. Maligo
Village Balkur.	Kulanji village.	Taggarshe.	Kotteshwar.		Do.	Do.	Kotteshwar.	
"	9	125, 177, 153, 123, 167 173, 183 and 184.	76		Do.	Do.	159	
	Rs. A. P. 9 7 0	Rs. A. P. 166 12 0	Rs. A. P. 74 14 5		Rs. A. P. 23 14 0	Do.	Do.	Rs. A. P. 66 3 10
	₹ 15 0					Do.	Do.	10 5 8
	4¾ manigas and 3½ seers of rice.	Rs. 60-0-0.	24 manigas of rice and Rs. 8.		Rs. 20 plus half the cess annas 16.	Do.	Do.	15 manigas of rice and Rs. 2 rent due from 3rd defendant to defendants 1 and 2 was 18 manigas of rice and Rs. 10.

Assessment having been enhanced at settlement the pattadar and mulgar ceased to pay settlement assessment and as it was collected by the Government from the sub-lessee, the latter ceased to pay the rent due from him. Hence the pattadar brought a suit for a declaration that the lessees and sub-lessee should be made liable to pay the enhanced portion of the assessment.

The suit was dismissed by this court as well as by the First and Second Appellate Courts, the finding being that in the absence of a contract to the contrary the pattadar alone was liable to pay the enhanced assessment and the mulgeni tenants were not bound to bear any portion of the same.

The plaintiff as the assignee of the original mulgeni lessees sued his under-lessee to recover Rs. 712-3-0 on account of the arrears of rent with interest due for five years from the sub-lessee without giving credit to the payments of assessment made by the latter during those years.

The suit was decreed against the sub-lessee after holding that the pattadar was liable to pay the whole assessment and the puisne lessee was not bound to give credit to the payment of assessment made by the sub-lessee and that the latter's remedy was to claim payments of assessment made by him from the pattadar. This decree was confirmed in appeal.

The plaintiff, the sub-lessee sued to recover from the pattadar and the intermediate lessee Rs. 631-1-8 principal and interest on account of the payments of assessment made by him at Rs. 66-3-10 a year as from 1907 to 1912 claiming also a charge for the amount on the right title and interest of the pattadar and the intermediate lessee.

This suit was decreed in favour of the plaintiff for the amount allowed and this decree was confirmed in second appeal.

This was a suit brought by the mulgenidar against the pattadars for the recovery of Rs 307-12-1 inclusive of interest in respect of the aggregate sum of Rs. 268-9-11 being the assessment paid by him for the holding from to 1916 (after giving credit to only three years' mulgeni due from him) as the pattadars failed to pay the assessment as the same exceeded the rent reserved.

The suit was decreed against the pattadars but the rent due by the lessee for all the years was given credit to in the amount claimed.

This was a suit by the mulgenidars against the mulgars and the pattadars for refund of assessment paid by them from 1904 to 1914, viz., Rs. 258-5-10 plus Rs. 183-10-6 interest on the same from the respective dates of payment as the pattadars failed to pay the assessment.

The suit was decreed against the pattadars in favour of the mulgenidars for the amount allowed.

This suit is similar to the above. The sub-mulgeni lessee brought this suit against the pattadars and mulgars for the recovery of assessment with interest that is Rs. 190 paid by him as they ceased to pay the assessment.

The suit was decreed against the mulgars and the pattadars for the amount allowed.

Plaintiff sued for a declaration that defendant was liable to pay plaintiff annually a net rent of 4¾ manigas and 3½ seers of rice after payment of the settlement assessment by the defendant himself. Defendant pleaded that the enhanced portion namely Rs. 2-8-0 should be deducted from the rent due by him.

This court, after construing the document to cast the liability upon the defendant, decreed in favour of plaintiff.

K. BALAJI RAO,
District Munsif

(6)

Name of village.	Patta number.	Name of pattadar and the mulgenidar.	Settlement assessment.	Revenue assessment.	Mulgeni rent according to the mulgeni lease.
			Rs. A. P.	Rs. A. P	Rs. A. P.
Haladi of Kundapur taluk.	14	Mahabaleshwara Adiga, Mulgeni Puttanna Bhatta.	9 11 0	5 9 9	8 8 0
Mada Mākki taluk.	31	Mahabaleshwara Agiga, Mulgeni Dasa Bhatta.	91 12 0	30 0 0	65 5 6
Do.	14	Mahabaleshwara Adiga, Mulgeni Srinivasa Bhatta.	75 10 0	20 0 0	49 15 0
Belve of Kundapur taluk.	14	Mahabaleshwara Adiga, Mulgeni Nagappa Tolara.	67 15 0	29 0 0	36 0 0
Kundapur kasba ..	232	Mahabaleshwara Adiga, Mulgeni Abdul Saiba.	6 1 0	1 8 0	3 0 0
Pandeshwar of Udipi taluk.	94	Mahabaleshwara Adiga, Mulgeni Krishna Holla.	24 14 0	1 8 0	6 0 0
Kachur of Udipi taluk.	Not known	Venkatachalaya, Mulgeni Jagannatha Mallya.	9 10 0	1 0 0	5 0 0
[illegible]kunje of Udipi [illegible]luk.	16	Nandiappa Shetti, Mulgeni Ramappa Adiga.	2 6 0	..	0 3 0
Kotathattu of Udipi taluk.	146	Puniappa Karantha, Mulgeni Ananthaya Upadya.	1 6 0	0 1 0	0 8 0
Shirur of Udipi taluk.	13	Sode Matt, Mulgeni Kaveri Seedthi.	146 8 0	56 4 0	96 11 6 and 6 muras of raw rice.
Thenka of Udipi taluk.	168	Sode Matt, Mulgeni Chandamiya Sahib.	1 5 0	..	0 4 0
Innanje of Udipi taluk.	77	Sode Matt, Mulgeni Muthakke.	51 3 0	..	20 11 0 and 2½ muras and 7 seers of raw rice.
Herur of Udipi taluk.	20	Sode Matt, Mulgeni Vishnumurthi Upadya.	0 9 0	..	0 8 0
Mallar of Udipi taluk.	146	Sode Matt, Mulgeni Vaikunta Shanbogue.	27 7 0	20 9 0	24 0 0
Shenapur of Kundapur taluk.	50	Madappaya, Mulgeni Annappa Shetty.	37 9 0	38 8 5	54 0 0
Uppunda of Kundapur taluk.	380	Durga Parameshwari, Mulgeni Madappaya.	14 9 0	..	1 8 0
Kundbarandadi of Kundapur taluk.	4	Nagappa Bhandari, Mulgeni Madappaya.	1 2 0	..	0 12 0
Do. do.	70	Puttaya Upadya, Mulgeni Chinnappa.	4 15 0	..	4 0 0
Do. do.	73	Puttaya Upadya, Mulgeni Nagappa Bhandari.	2 8 0	..	1 4 0
Kundapur kasba.	537	P. Venkataramanaya and Vasudeva Holla, Mulgeni Laxmi and Subraya.	*3 3 1	..	2 1 9
Do.	820	P. Venkataramanaya and Vasudeva Holla.	*2 0 2	..	0 11 3
Do.	544	P. Venkataramanaya and Shankar Rao, Mulgeni Subraya.	*11 10 5	..	5 5 7
Do.	670	P. Venkatramanaya and three others, Mulgeni Annappa.	*11 14 10	..	4 11 7
Do.	171	P. Venkataramanaya, Mulgeni Annappa.	*0 12 2	..	0 8 6
Angali of Kundapur taluk.	189	Mahabaleshwar Adiga, Mulgeni Sylvestar Fartado.	8 4 0	2 0 0	18 0 0
Do. do.	236	Mahabaleshwara Adgiga, Mulgeni Veera.	10 10 0	3 0 0	27 0 0
Do. do.	199	Mahabaleshwara Adiga, Mulgeni Anna Bai.	33 13 0	4 0 0	49 9 6
Shiva of Udipi taluk.	12	Sode Matt, Mulgeni Bastad and three others.	22 1 0	8 4 0	8 0 0 and 7 muras of raw rice and 4 head loads of vegetables and labour of 8 coolies.
Do. do.	14	Sode Matt, Mulgeni Manjee.	51 13 0	22 0 0	11 10 0 and 3¼ muras and 2¼ seers of raw and 18½ muras of boiled rice.
Do. do.	15	Sode Matt, Mulgeni Venkataramana Bhatta.	17 8 0	6 10 7	82 7 6 and 9½ muras and 2 seers of boiled and 13 muras and 7½ seers of raw rice and ½ mura of black gram.
Do. do.	16	Sode Matt, Mulgeni Bhagirathiamma.	13 1 0	4 14 0	
Do. do.	17	Sode Matt, Mulgeni Ramakrishna Bhatta and Narayana Bhatta.	33 0 0	11 14 1	
Do. do.	23	Sode Matt, Mulgeni Ananthaya Shanbogue.	63 5 0	13 6 0	
Do. do.	18	Sode Matt, Mulgeni Jogappa Hegode.	133 9 0	45 6 0	100 muras of boiled rice.
Do. do.	28	Sode Matt, Mulgeni Sitarama Hebbara.	11 14 0	4 8 0	20 and 24 muras of boiled rice, 6 head loads of vegetables and 2 coolies.
Kattangere of Udipi taluk.	51	Sode Matt, Mulgeni Sitarama Hebbara.	19 2 0	8 6 10	
Padebettu of Udipi taluk.	56	Sode Matt, Mulgeni Anantha-charya.	0 11 0	0 6 0	Rupee one and 1¼ muras and 3½ seers of raw rice.
Do. do.	84	Sode Matt, Mulgeni Padmanabha Bhatta.	0 14 0	0 7 0	Rupee one and 1¼ muras and 3½ seers of raw rice.

* Including cesses.

Name of village.	Patta number.	Name of pattadar and the mulgenidar.	Settlement assessment.	Revenue assessment.	Mulgeni rent according to the mulgeni lease.
			RS. A. P.	RS. A. P.	RS. A. P.
Badu of Udipi taluk.	18	Sode Matt, Mulgeni Angara Shetti.	0 7 0	0 5 0	1 0 0
Do.	17	Sode Matt, Mulgeni Kaly Shedthi.	36 0 0	..	42 4 0 not registered as mulgeni at settlement.
Do.	19	Sode Matt, Mulgeni Subba Shetti.	10 4 0	7 0 0	13 5 0
Do.	17	Sode Matt, Mulgeni Basavu Poojari.	74 7 0	..	82 6 0 not registered as mulgeni at settlement.
Paduru of Udipi taluk.	4	Sode Matt, Mulgeni Subbanna Tantri and two others.	0 11 0	0 4 5	63 4 8 and 12½ muras and 4½ seers of boiled rice.
Do.	33	Sode Matt, Mulgeni Kamalamma.	25 5 0	10 3 11	
Do.	34	Sode Matt, Mulgeni Gopalakrishna Tantri.	16 2 0	6 8 6	
Do.	74	Sode Matt, Mulgeni Krishna Tantri.	12 11 0	5 2 2	
Do.	76	Sode Matt, Mulgeni Srinivasa Tantri.	13 15 0	5 10 3	
Do.	81	Sode Matt, Mulgeni Subraya Tantri.	11 13 0	4 12 6	
Do.	86	Sode Matt, Mulgeni Subbanna Tantri.	12 11 0	5 2 2	
Mallar of Udipi taluk.	147	Sode Matt, Mulgeni Srinivasacharya and two others.	67 4 0	54 0 0	60 0 0 and 4 muras of boiled rice.
Do.	149	Sode Matt, Mulgeni Subbanna Bhatta.	18 8 0	13 10 0	37 8 0
Karkal of Udipi taluk.	27	Sode Matt, Mulgeni Narayana Bhatta.	4 3 0	0 15 5	14 2 0
Do.	28	Sode Matt, Mulgeni Narayana Upadya and Subraya Upadya.	48 4 0	10 13 7	10 14 0 and 3 muras and 2 seers of raw and 9¼ muras and 3½ seers of boiled rice.
Udiawar of Udipi taluk.	74	Sode Matt, Mulgeni Gopalakrishnayya and Juoma Lobo.	2 0 0	1 12 0	4 2 0
Do.	78	Sode Matt, Mulgeni Mariappa Bhatta.	4 5 0	3 12 0	0 4 0 and 2½ muras of rice and 7 seers of boiled rice.
Do.	80	Sode Matt, Mulgeni George Cornelio Fernandes.	2 3 0	1 15 0	3 0 0
Do.	81	Sode Matt, Mulgeni Jaru Poojari.	28 11 0	18 5 0	32 4 0
Mattu of Udipi taluk.	18	Sode Matt, Mulgeni Ramachandra.	3 5 0	2 8 3	6 6 0 and seven tender coconuts.
Do.	198	Sode Matt, Mulgeni Ramakrishna.	4 15 0	3 12 0	,, 13 4 0
Do.	199	Sode Matt, Mulgeni Parvathi.	0 6 0	0 4 7	,, 8 0 0
Pangal of Udipi taluk.	104	Sode Matt, Mulgeni Nagappaya.	2 0 0		
Udiargoli of Udipi taluk.	200	Sode Matt, Mulgeni Bhandari Poora.	48 10 0	62 6 0	161 7 5 and ½ mura and 7 seers of raw rice.
Do.	204	Sode Matt, Mulgeni Nagappaya.	47 10 0		
Balnad, Uppenaigadi taluk.	40	Madakke Kunhi and Mammakke Mulgeni Subraya Naika.	64 3 0	..	60 0 0
Aryapu, Uppenaigadi taluk.	19	P. Suuaya, Mulgeni Billa Subbappa.	60 7 0	..	50 0 0
Ulamogar, Uppenaigadi taluk.	31	Muthakke Mulgeni Derii	37 5 0	..	32 0 0
Puttur, Uppenaigadi talul	94	Vishnu Rao, Mulgeni Ramappaya.	5 10 0	..	5 0 0
Do.	92	S. Ramakrishnaya, Mulgeni Janardhanaya.	19 15 0	..	10 0 0
Do.	199	Vishnu Rao, Mulgeni Poovani Hegadi.	1 1 0	..	0 3 0
Do.	65	Brahmaya Shetti, Mulgeni Marian Coelho	10 15 0	..	5 0 0
Do.	97	Brahmaya Shetti Mulgeni Venkataramanaya.	12 6 0	..	9 0 0
Do.	168	Brahmaya Shetti, Mulgeni Lores Vas.	1 4 0	..	1 0 0

V

Official Memorandum No. 820-B/19-6, Revenue, dated 23rd February 1920.

With his opinion No. 73, dated 12th March 1914, the Advocate-General furnished the Government with a draft Bill to provide for the enhancement of the rents payable under mulgeni leases in the district of South Kanara. The draft Bill, as revised by the Government, was approved by the Government of India who, however, suggested that the introduction of the Bill into the Legislative Council might be postponed until after the war, as the measure was likely to be contentious.

2. It is now proposed to introduce the Bill with certain alterations agreeably to the conclusions arrived at at an informal conference of officials and non-official held at Mangalore on 18th October 1919. A copy of the proceedings of th conference is enclosed. The main alteration in the Bill is the division of the increase in assessment between the mulgar and the mulgenidar in the ratio of the old asesssment instead of on the basis of the benefits from the land.

3. A revised Bill, together with a revised Statement of Objects and Reasons, is transmitted to the Advocate-General for favour of remarks. His opinion is specially invited on the following points :—

(i) whether the words in italics in clauses 2 (*a*) and 5 of the Bill are unnecessary in view of the expression *or came into existence* which appears in clause 2 (*a*) and

(ii) whether the words underlined in sub-clauses (2) and (3) of clause 3 are necessary in order to make it clear that the terms ' mulgar ' and ' mulgenidar ' include not only the original parties to the lease but also the persons claiming under them.

E. S. Lloyd,
Acting Secretary to Government.

To the Advocate-General (through the Government Solicitor) with copies of a draft Bill, Statement of Objects and Reasons and Proceedings of the Conference, dated 18th October 1919.

Enclosures

[Not printed.]

VI

Letter—from H. Brightwell, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—the 28th April 1920.
No.—526.

Abstract.—Forwarding the following opinion of the Hon'ble the Advocate-General, No. 448, dated 27th April 1920 :—

Opinion.

[The Mulgeni Rent Enhancement Bill.]

Clause 2 as now worded would give relief only in cases where the mulgeni tenure is created by a grant in writing or an oral lease, express or implied. Where a mulgeni tenure is inferred by the court by long continuous payment of a fixed rent, the court infers that there was a grant in fact, proved not by direct evidence of the grant, but by proof of facts from which the existence of a grant is presumed. But there may be cases where there may be no valid or operative lease, yet a person may acquire a mulgeni right by adverse possession. For instance there may be cases where the tenant takes possession under an unregistered lease in writing, when the writing has to be registered; it may even be that the Transfer of Property Act applies to a particular case, in which case there can be no permanent lease without a writing registered. In these cases the person let into possession, may acquire a mulgeni right by 12 years' possession under a claim of right and the relation between the owner of land (the mulgar) and the person in possession would be precisely the same as if there was a valid mulgeni lease. Again there are cases where the properties of the mutts (there are a considerable number of such mutts in South Kanara) may be leased on mulgeni tenure by the head for the time being which may be void or voidable. In some of these cases at least where the mutt property is trust property, the person to whom such an invalid lease was given may acquire mulgeni rights by adverse possession. In cases where a mulgeni right has been acquired by adverse possession, the tenure is precisely the same as a mulgeni tenure acquired by a valid grant, and yet the former class of cases would not be governed by the Bill, and the mulgar would not be entitled to the benefit of the Act if passed. I do not know if this was intended; if not changes will have to be made in the proposed definition of mulgar and mulgenidar. In section 2 instead of the word ' lease ' the word ' tenure ' will have to be substituted and in clause (*a*) for ' granted ' the words ' created or acquired ' may have to be substituted.

Taking the clause as governing only 'leases,' it is unnecessary to have the words 'or executed or came into existence' and the words 'or which may hereafter such date.' As already observed by me the lease does not come into existence by a decision of a court, and if there is no actual lease [except in cases where the court holds that although there is no grant (i.e.) no lease, the person in possession has acquired the mulgeni right by adverse possession], the court cannot and does not presume the existence of a lease, contrary to fact. The court very often infers that there is a lease, especially when there is no written lease, but that inference is an inference of fact, and not a presumption of law as in the case of the 'lost grant theory' in English law. Anyhow if the wording is altered as suggested above, it will cover all the cases.

Cases where the question whether the relation between the parties to a suit is that of mulgar and mulgenidar comes up for decision present many forms but it is very rarely that any declaration is made; and in a vast majority of cases no declaration is made as to when the tenure was created. The words underlined are I think useless for the purposes of the Bill.

2. (*b*) I do not see the use of this clause. The principal provision of the Act is the settlement of an 'enhanced rent' by the Collector on application made by the mulgar and the enhanced rent comes into effect from the revenue year in which the application is made and prevails thereafter (sections 9 and 10). It has no retrospective effect.

If then there is no subsisting relationship of landlord and tenant before the date of the application to the Collector which application must be after the Act comes into force no such application can be made at all.

3. *Sub-clause* (*c*).—Why the later contract in writing with respect to the contingency of an enhanced assessment should be before the date fixed under sub-clause (*a*) is not clear. There must be consideration for the later contract and if the mulgar and the mulgenidar enter into a new binding contract in respect of the rent in view of the enhanced assessment there appears to be no need for them to go before the Collector to settle a fair rent. The mulgenidars are not like ryots in a zamindari who may require protection and in whose case the theory of freedom of contract does not apply. The mulgenidar can deal with the mulgar at arm's length and the restriction appears unnecessary. I think the last clause must be a separate sentence: in fact it may be separate clause (i.e.) *omit* 'but no order

4. *Clause* 3.—If my suggestion in the beginning of this note is accepted there may be a definition of 'mulgeni tenure' and the definitions of mulgar and mulgenidar may be recast and after the word 'heirs' the word 'representatives' may be added.

5. *Clause* 4.—The words 'by the Act' should be inserted between 'Collector' and 'upon'.

6. *Clause* 5.—I do not think there is any particular advantage in restricting the application to six months from the date fixed. The mulgar under sections 9 and 10 can get the enhanced rent only after the application. If he does not choose to apply before, he loses the enhanced rent. It would therefore be to his interest that he should come in as soon as he can. On the other hand by restricting the right to apply to six months, a great deal of hardship may be caused. The Collector can act only if the mulgeni tenure is established between the parties or admitted by them. In almost every case where there is no written instrument the parties are likely to dispute the existence of the permanent tenure. The Collector cannot dispose of that question; in fact the Act proceeds on the basis that before they go before the Collector, the relationship between the parties is established or settled. If such a question is raised before the Collector, he can do nothing. There is not even a provision for referring it to the court. Then there is the further question as to when the tenure was created or mulgeni right was acquired. The Bill appears to contemplate an inquiry into this question by the Collector (see section 6); but the time of creation as well as the existence of the tenure are so much mixed up that they will have to be settled by a civil court and may be so settled either before the application or after. Provision will have to be made for fresh applications after the decision by the civil court. The question of tenure may arise in a suit for ejectment, a claim to

sell the tenure, in a suit for rent, and in various other ways. The issue as to the tenure may be decided in one way by one court, in another by the appellate court and so on. Instead of restricting the time to six months and give power to the Collector to exempt in particular cases (the particular cases are likely to be numerous) I think it is better to allow the mulgar to apply when he desires which would ordinarily be after it had been established that there is a mulgeni tenure, unless the same is admitted. In this view except the first paragraph the rest may be omitted.

7. *Clause* 7.—What is meant by the old assessment and the new assessment may be made clear. The old assessment means the assessment fixed in 1819 and the new, the survey and settlement assessment of 1902.

Proviso.—'for believing' may be omitted. Instead of 'in accordance with general principles of equity', 'equitably' may be substituted; for, the words used would be understood as meaning in accordance with the principles of English Equity Jurisprudence. None of them or at least most of them would be inapplicable. The illustration 'as for instance . . assessed' may also be omitted. If necessary, rules may be framed as to the manner in which the Collector should exercise the power.

8. *Clauses* 8, 9 *and* 10 seem to be allright.

9. *Clause* 11.—The appellate forum may well be the District Court in all cases. The distribution of the applications to the Collectors by the District Collector need not be with reference to their value or complexity.

10. *Clause* 12.—I find some difficulty in the provision as to transfer of suits. This clause indicates that in spite of sections 9 and 10 the mulgar should not be compelled to repay the amount of enhanced revenue or such portion thereof as he should not be bound equitably to pay from the date fixed in the notification; but the last sentence declares that the revision of assessment will take effect from the date of the transfer which would I presume be very much later than the date fixed in the notification which will be sometime in 1902. Even in this country where the memories of the old Chancery Courts are sometimes revived in the duration of cases it would be hard to find a case pending for over 18 years (1902 to 1920); are execution proceedings also included? Has the Collector power to give a decree in accordance with his determination? Portions of the sum sued for may be legitimately payable by the mulgar. It must also be remembered that a pending suit must necessarily be for moneys due before its institution; and if the Collector's order is to take effect on the date of transfer, how can it affect the suit or the claim? I am afraid the Bill must be recast. If the Government will let me know their views in the light of the criticisms I have offered above, I shall be glad to redraft the Bill.

K. Srinivasa Ayyangar,
Advocate-General.

VII

Official Memorandum No. 820-B/19-9, Revenue, dated 19th May 1920.

With reference to his opinion No. 448, dated 27th April 1920, the Hon'ble the Advocate-General is requested to redraft the Mulgeni Rent Enhancement Bill in the light of the following remarks:—

(*a*) The Advocate-General's suggestions in regard to clauses 2 (*a*), 2 (*b*), 3 and 4, are accepted.

(*b*) The reason why clause 2 (*c*) does not save contracts entered into subsequent to the date fixed by Government under clause 2 (*a*) is that they were entered into at a time when the civil courts were generally inclined to the view that the enhancement should be borne by the mulgar. Such contracts would be one-sided having in all probability been entered into by the mulgar under the pressure of civil courts' decisions. The clause is intended for the protection of the mulgars' interests and Government consider that it should remain.

(*c*) As regards the Advocate-General's suggestion that sub-paragraph 2 of clause 5 be omitted, Government consider that, as the legislation is designed to deal with a special set of circumstances, there must be some finality. The object is that all cases requiring settlement should be brought to the notice of the Collector within a specified time, and such of them as involve no dispute as to the nature of the

tenure should at once be dealt with by the Collector. Where there is a bona fide dispute as to the tenure the Collector is expected to refer the parties to a civil court. No specific provision requiring such reference has been made in the Bill as being unnecessary in view of the fact that the Bill does not oust the jurisdiction of civil courts in such matters. Provision is made in clause 5 of the Bill for the admission of applications presented after the prescribed date owing to the question of tenure having been pending in civil courts. If the civil court decides the nature of the tenure and the date of the acquisition, the Collector will act upon the decision. If the court merely makes a declaration as to the nature of the tenure without determining the date of its acquisition the Collector will have to fix the date under clause 6 of the Bill. The Government are of opinion that sub-paragraph 2 of clause 5 should remain.

(*d*) The Advocate-General's suggestion that the words 'for believing' in the proviso to clause 7 be omitted does not commend itself to Government. His suggestions in respect of the clause are otherwise approved.

(*e*) The Government would let clause 11 stand as it is.

(*f*) The Advocate-General's criticism of clause 12 is not very clear. The date prescribed in the notification under clause 5 must be a date subsequent to the passing of the Act and cannot be sometime in 1902 as the Advocate-General thinks. As regards pending suits Government presume that the Advocate-General's difficulty is as to how claims relating to the period prior to the date of transfer are intended to be dealt with. From clause 10 of the Bill it will be seen that the Act is not to have retrospective effect and the Collector has therefore no power to decree claims for periods prior to the date of transfer of the suits to him. The suits must be by mulgenidars to recover from mulgars the enhanced assessments paid by them and as the principle of the Bill is that the major portion of the enhanced assessment should be borne by the mulgenidar, the hardship that the mulgenidar would suffer by his being deprived of his claim in regard to past payments is ignored. The clause is not intended to apply to execution proceedings. The Advocate-General is requested to revise the clause if necessary so as to make the intention clearer.

2. With reference to clause 8 of the Bill the Collector of South Kanara points out that there may be cases in which the assessment on the mulgeni holding has been apportioned among the fields comprising it by the parties themselves or by the Settlement Officer on a basis different to that laid down in clause 8. These could not be treated as cases in which the assessment on individual fields is known and the Collector might therefore be compelled to make a fresh apportionment under clause 8, thereby disturbing the arrangements already made. It is not the intention of Government that such cases should be reopened by the Collector and the Advocate-General is requested to make the necessary amendments in clause 8.

3. The Advocate-General is requested to treat this reference as very urgent as it is proposed to introduce the Bill at a very early date.

E. S. Lloyd,
Acting Secretary to Government

To the Hon'ble the Advocate-General.

VIII

OPINION.

The following alterations seem sufficient to carry out the intention of the Government:—

Clause 2.—Substitute 'tenures' for 'leases' and omit the words 'fulfil the following conditions, namely'.

(*a*) Substitute 'created or acquired' for 'were granted or executed or came into existence' and 'Local Government' for 'Governor in Council' and the latter substitution should be carried out throughout the Bill; the words in italics preceded by 'or' should be omitted as being unnecessary. Clause (*a*) would then read thus—

"Were created or acquired prior to a date to be fixed in this behalf by the Local Government in respect of each taluk or other local area; and".

Delete clause (*b*) and reletter (*c*) as (*b*).

Clause 2 (*c*).—Omit 'but'. The words from 'no order' to 'such lease' should be a separate sentence.

Clause 3 (1) should read 'mulgeni tenure means a holding of land in perpetuity on a fixed rent whether in money or kind or both and includes tenures of the description known as 'kayamgeni,' 'nigdigeni' and 'sub-mulgeni,' but not 'walawarg'

Clause 3 (2) should read 'mulgar means the owner of land held under mulgeni tenure, his heirs, representatives and assigns and includes a mulgenidar who has granted a mulgeni lease to a sub-mulgenidar or sub-tenant, his heirs, representatives and assigns.'

Clause 3 (3) should read 'mulgenidar means a tenant of land held under lgeni tenure, his heirs, representatives and assigns and includes a mortgagee in possession from such tenant or from his heirs, representatives or assigns.'

Clause 4.—Insert 'by this Act' between 'Collector' and 'upon.'

Clause 7, *proviso*.—Omit the words from 'as for instance' to 'area assessed' and all the words after 'apportionment'; and for the word 'the' before 'apportionment' substitute the words 'a fair and equitable.'

Clause 8.—Add the following proviso at the end: "Provided that, where an apportionment of the old assessment on a holding has been made among the survey fields comprising it by agreement between mulgar and mulgenidar or by the Settlement Officer, such apportionment shall be accepted by the Collector even though it did not conform to the provisions of this section."

Clause 12.—By mistake I read section 5 in this clause as section 2 and my remarks were based on that. Under sections 9 and 10 the rent as fixed will take effect from *the revenue year* in which application is made till revised on account of variation in assessment. Under this clause the revised rent will take effect only from the date of the transfer. There can therefore be no decree in the suit and the suit in so far as it seeks recovery of any sum paid, will be dismissed, as such sums must have accrued due before the date of the suit. The suit in so far as this matter is concerned will, on transfer, be treated as an application by the mulgar and a fair rent fixed. After this, a suit can be instituted for any sum which the mulgenidar may have paid in excess after the date of the transfer. That would be the effect of the section, and as that is the intention of the Government, no change in the language is required. The words 'or proceedings' may be omitted.

K. Srinivasa Ayyangar,
Advocate-General.

Order—No. 1245, Revenue, dated 1st June 1920.

Miscellaneous.

The Mulgeni Rent Enhancement Bill, with the Statement of Objects and Reasons, is transferred to the Legislative Department for further action.

2. The following letter will be despatched to the Government of India.

(True extract)

E. S. Lloyd,
Acting Secretary to Government

To the Legislative Department, with copies of Bill,
Statement of Objects and Reasons and letter to the Government of India.
Board of Revenue (Land Revenue), with copies of Bill and Statement of Objects and Reasons.

[Annexure.

ANNEXURE

THE MULGENI RENT ENHANCEMENT BILL.

Preamble. WHEREAS it is expedient to amend the law relating to mulgeni leases in the district of South Kanara, in order to provide for the apportionment of the difference between the assessment at the settlement of 1902 and that at the settlement of 1819, it is hereby enacted as follows:—

Short title and local extent. 1. This Act may be called the Mulgeni Rent Enhancement Act and shall be applicable to the whole of the district of South Kanara.

Mulgeni leases to which the Act applies. 2. The provisions of this Act shall apply to such mulgeni tenures as

(*a*) were created or acquired prior to a date to be fixed in this behalf by the Local Government in respect of each taluk or other local area; and

(*b*) do not expressly provide in writing, whether in the original lease or in any other contract entered into before the date fixed by the Local Government under sub-clause (*a*), for the contingency of the enhancement by Government of the land revenue assessment leviable on the land forming the subject of the lease.

No order or decree of a civil court passed before this Act comes into force shall operate to prevent the application of the Act to any such lease.

Definitions. 3. In this Act, unless there is something repugnant in the subject or context,

Mulgeni tenure. (1) 'Mulgeni tenure' means a holding of land in perpetuity on a fixed rent, whether in money or kind or both, and includes tenures of the description known as 'kayamgeni', 'nigdigeni' and 'sub-mulgeni', but not 'walawarg'.

Mulgar. (2) 'Mulgar' means the owner of land held under mulgeni tenure, his heirs, representatives and assigns, and includes a mulgenidar who has granted a mulgeni lease to a sub-mulgenidar or sub-tenant, his heirs, representatives and assigns.

Mulgenidar. (3) 'Mulgenidar' means a tenant of land held under mulgeni tenure, his heirs, representatives and assigns, and includes a mortgagee in possession from such tenant or from his heirs, representatives or assigns.

Collector.

4. It shall be competent to the Local Government to confer all or any of the powers and to impose all or any of the duties conferred or imposed on the Collector by this Act upon any other officer or person by notification in the official gazette.

Application to enhancement.

5. Any mulgar may make an application in writing to the Collector to make an order for the enhancement of the rent payable under a mulgeni lease of land of which he is the mulgar.

Such application must be made within six months from the date fixed in this behalf by the Local Government by a notification published in the official gazette. It shall be in such form as the Local Government may prescribe and shall be accompanied by such fees as may be fixed by the Local Government.

Provided that the District Collector may, in cases in which the lease may hereafter be declared by a court to be a mulgeni lease subsisting from a time prior to the date mentioned in clause 2 (*a*) and in other cases for special reasons to be recorded in writing, entertain any application presented after the date notified as above. The District Collector may deal with the application himself or transfer it to the Collector for disposal.

Inquiry and determination of enhancement of rent.

6. On receiving an application under section 5, the Collector or District Collector, as the case may be, shall hold an inquiry, and, if he is satisfied that the mulgeni lease to which the application relates fulfils the conditions laid down in section 2, shall, in accordance with the provisions of the next following section, determine by an order in writing what enhancement, if any, shall be made in the rent payable in respect of the mulgeni lease.

Principles on which enhancement is to be made.

7. (1) Where the rent is payable in money, it may be enhanced by an amount not exceeding the whole of the excess of the new assessment over the old.

(2) Where the rent is payable in kind, the increase in the assessment shall be divided between the mulgar and mulgenidar in the proportion borne by the assessment to the new assessment on the land and the rent enhanced by an amount equal to the mulgenidar's share of the increase in the assessment.

(3) Where the rent is payable partly in money and partly in kind, the proportion that the money rent bears to the total rent shall be ascertained and the money rent enhanced by an amount not exceeding

the same proportion of the increase in the assessment. The remainder of the increase in the assessment shall be apportioned in accordance with the principle stated in sub-section (2) and the mulgenidar's share shall be added to the rent.

Provided, that, where good cause is shown for believing that such a division would be inequitable, the Collector may make a fair and equitable apportionment.

Provided further that the increase in rent shall always be in money.

Mode of ascertainment of old assessment.

8. In cases in which the initial assessment on individual fields is not known, such assessment shall be calculated by apportioning the old assessment of the holding among the survey fields comprising it according to the proportion which the settlement assessment of each survey field bears to the settlement assessment of the whole holding.

Provided that, where an apportionment of the old assessment on a holding has been made among the survey fields comprising it by agreement between mulgai and mulgenidar or by the Settlement Officer, such apportionment shall be accepted by the Collector even though it does not conform to the provisions of this section.

Enhancement of rent to remain in force until assessment is varied.

9. (1) The enhancement in rent determined under section 6 shall remain in force unless and until the assessment is varied when, on application made by the mulgar or the mulgenidar, the Collector may direct such further enhancement or such reduction as may seem equitable having regard to the nature and extent of the variation in assessment.

When revision takes effect.

10. Any revision of rent under this Act shall take effect from the commencement of the revenue year in which application is made for such revision.

Appeal.

11. From every decision under this Act by a Collector other than the District Collector, an appeal shall lie to the District Collector, and from every original decision of the District Collector, an appeal shall lie to the District Court

The decision on appeal of the District Collector or the District Court, as the case may be, shall be final.

Reference to Collector of pending proceedings in civil courts by mulgenidars for the recovery of sums paid in consequence of increased assessment

12. From and after the date fixed in the notification issued under section 5, no suit shall lie by any mulgenidar for the recovery of any sum paid in consequence of the increase in assessment, and all such suits as are pending in the civil courts on the date above referred to, in so far as they relate to the recovery of any such

sums, shall be referred by the courts concerned to the Collector for disposal under this Act. The Collector shall thereupon proceed as if an application had been made to him under section 5 and shall treat the date of plaint as the date of application.

Power to make rules.

13. The Local Government may, after previous publication, make rules for the purpose of carrying out the provisions of this Act.

In particular and without prejudice to the generality of the foregoing provision, the Local Government may make rules—

(1) fixing the date specified in section 2;

(2) prescribing forms and the mode of service of notice under this Act;

(3) fixing the fees, costs and charges to be paid in respect of proceedings under this Act;

(4) prescribing the procedure to be followed by the District Collector or the Collector in the discharge of any duty imposed on him by or under this Act;

(5) providing for commutation and apportionment under sub-sections (2) and (3) of section 7.

STATEMENT OF OBJECTS AND REASONS.

1. Under the terms of a *mulgeni* lease in South Kanara, the land is held in perpetuity at a fixed rent. In most of such lease-deeds granted before the introduction of the settlement of 1902, the rent was fixed with reference to the old assessment charged at the settlement of 1819, the lessors not having made any provision for the contingency of increase.

2. In S.A. No. 229 of 1907 a Full Bench of the High Court of Madras has decided that when the *mulgar* or *mulgeni* landlord is the registered pattadar, a *mulgeni* tenant who has paid the assessment on his lands in order to release them from attachment and prevent their sale is entitled under section 35 of the Madras Revenue Recovery Act, 1864, to deduct such payments from the rent due to his landlord under the terms of the lease. As the law stands, therefore, the whole burden of the increased assessment must be borne by the *mulgeni* landlord, who is the registered holder. The position of the majority of the *mulgeni* landlords is thus a difficult one. They are responsible for the payment of an assessment which bears no relation to, and is sometimes even in excess of, the rents reserved in their leases, and they are powerless to alter th[redacted]rents.

3. It is therefore considered desirable to pass a short enactment providing for the enhancement of *mulgeni* rents, so as to secure an equitable distribution of the increased assessment imposed at the resettlement.

4. The scheme of the Bill is to enable landlords whose lands were leased on *mulgeni* tenures before the late settlement to apply to the Collector to enhance the rent payable on the lands by an amount not exceeding the difference between the old and the new assessment. The method proposed for the distribution of the increase is the most equitable that can be arrived at in view of the difficulty of assessing the benefit derived by either party from the land at the time when the *mulgeni* lease was originally granted.

5. The following notes explain some of the detailed provisions of the Bill:—

Clause 2 (*a*) restricts the application of the Bill to leases which were granted or executed before dates to be fixed specially for the several taluks or other local areas. The Bill provides a special remedy for special cases in which the effect of the new settlement has been to prejudice the landlords, and landlords and tenants who have entered into contracts with full knowledge of the terms of the settlement have no claim to the benefits of such legislation. The intention is therefore to exclude leases executed after the new rates of assessment were generally known; and as they became known at different dates in different parts of the district, provision is made for the notification of suitable dates accordingly.

The words " or acquired " have been inserted in this clause in order to provide for cases in which the mulgeni tenure is presumed by the courts although there is no actual lease.

Clause 2 (*b*) on similar principles is intended to exclude cases in which the parties have provided by express contract for the contingency of an enhancement of the land revenue assessment.

Clause 7, which deals with the principles on which rents are to be enhanced, derives its origin from the judgment of the High Court in S.A. No. 582 of 1908 in which Justices Miller and Sankaran Nayar laid down the following principles :—

" The theory of enhancement being that the Government takes a share of the increased value of the produce due to increase in prices, it would follow that *prima facie* the tenant should pay the enhanced assessment if he pays a fixed money rent to the landlord. But where, as here, the rent is paid in kind or partly in kind, so that both the landlord and the tenant lose a proportion of the increased value of the produce, it seems equitable that the enhanced payment should be shared between them, the landlord paying that proportion of the increase which is equal to the proportion which he receives of the produce: in other words each party should pay in this. as in other cases, in proportion to the benefit he derives from his interest in the land."

The application of this general principle in cases in which the rent is payable in kind wholly or in part involves some difficulty. The exact proportion of the benefit derived by the *mulgar* and the *mulgenidar* at the time the *mulgeni* lease was originally granted is not ascertainable in most cases at this distance of time. Any principle of apportionment that may be adopted must therefore be more or less arbitrary. As the benefits arising from enhanced prices and other causes were taken into consideration in fixing the assessment at the resettlement it is proposed to apportion the enhancement between the *mulgar* and the *mulgenidar* in the proportion which the original assessment bears to the final assessment on the land. To provide for hard cases, as for instance where the increase in assessment is due to increase in area or where large areas of waste land have been leased out for nominal rents, it is proposed to invest the Collector with discretion to intervene and make an equitable settlement in cases to which the arbitrary rule is not fairly applicable.

Clause 10.—Subsequent to the decision of the High Court above referred to, many *mulgeni* tenants have brought suits to recover sums which they have paid in discharge of the assessment in excess of their rents. It is not considered necessary to give the Act retrospective effect so far as closed transactions are concerned ; but to avoid inconsistency and the possibility of double remedies, it is thought desirable to provide that all such suits and appeals pending at the time of the notification issued under section 5 of the Act shall be referred to the Collector for disposal under the Act.

GOVERNMENT OF MADRAS

REVENUE DEPARTMENT

No. 1246.

From

THE HON'BLE MR. E. S. LLOYD, I.C.S.,
Acting Secretary to the Government of Madras,
Revenue Department,

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,
DEPARTMENT OF REVENUE AND AGRICULTURE.

Dated, Stonehouse Hill, The Nilgiris, the 1st June 1920.

SIR,

Miscellaneous.

I am directed to request a reference to the Hon'ble Mr. Kershaw's letter No. 1037-2402, dated 2nd September 1915, in which the Government of India's approval of the provisions of the draft Mulgeni Rent Enhancement Bill submitted with the Hon'ble Mr. L. Davidson's letter No. 1438-A, dated 16th June 1915, was communicated with the observation that, as the measure was likely to be contentious, its introduction into the local Legislative Council should be deferred until after the war. The introduction of the Bill was accordingly postponed: and although nearly five years have elapsed since then, no *modus vivendi* has yet been arrived at between the mulgars and the mulgenidars of the South Kanara district in regard to an equitable distribution of the increased assessment imposed at the resettlement of the district in 1902. There have been representations in public and interpellations in the Legislative Council urging the speedy introduction of the proposed measure. The Hon'ble Mr. C. G. Todhunter discussed the matter at an informal conference, on the 18th and 19th October 1919, with some of the leading gentlemen of South Kanara representing all the interests involved and a revised Bill has been drawn up in accordance with the conclusions of the conference which, it is hoped, will be acceptable to all parties. I am to add that the revised Bill involves no change of principle, but only embodies in itself the procedure, accepted at the conference, in regard to the method of apportionment of the enhanced assessment between the mulgar and the mulgenidar which, in the Bill as originally drafted, was left to be dealt with by rules framed under the Act.

2. The revised Bill is being submitted separately to the Secretary of State and the Government of India in the Legislative Department. It is intended to introduce the Bill at the meeting of the Legislative Council to be held in August 1920, and I am to request that, if the Government of India have any objections to the Bill being proceeded with as proposed above, they will be pleased to intimate their objections as early as possible.

3. A copy of the revised Bill, with the Statement of Objects and Reasons, is enclosed.

I have the honour to be,

Sir,

Your most obedient servant,

E. S. LLOYD,

Acting Secretary to Government.

8n/13/7

NOTES CONNECTED WITH G.O. Nos. 1245-46, REVENUE, DATED 1st JUNE 1920

REVENUE DEPARTMENT.

[SUBJECT.—*Mulgeni Rent Enhancement Bill.*]

Please put up the Mulgeni Bill papers for South Kanara district. I should like to see them at 11 a.m. to-morrow.

M. YOUNG—6-2-19.

The papers relating to the Bill are submitted below.

W.A.K.—7-2-19.

The introduction of the Bill was postponed during the continuance of the war, as it is of a controversial nature.

It is not known whether India have withdrawn their opposition to the introduction of controversial measures. Before referring the matter to India, it seems desirable to ask the Collector of South Kanara whether any *modus vivendi* has been arrived at between the mulgars and mulgenidars, which would render legislation unnecessary. An inquiry in this direction was made in 1916, and it was been reported that no *modus vivendi* had been reached (G.O. Mis. No. 936, dated 30th March 1917). Possibly, however, something may have been done in this direction during the last two years. As the Bill is controversial, it would perhaps be as well to ascertain this before India is addressed.

We might also ask the Collector of South Kanara whether there is urgent necessity to introduce the proposed measures now.

M.Y.—7-2-19.

Approved.

A. G. C[ARDEW]—15-2-19.

A draft official memorandum to the Collector of South Kanara is submitted.

K.R.—20-2-19. F. J. NOBES—20-2-19

[Issued as Official Memorandum No. 259-B/19-1, dated 21st February 1919.]

From the Board of Revenue (Land Revenue) Mis. No. 755, dated 14th June 1919.

The Collector of South Kanara now reports that no *modus vivendi* has been arrived at between the mulgars and the mulgenidars which would render legislation unnecessary and that there is no prospect of an amicable settlement. He considers that legislation should be undertaken as early as possible. The Board of Revenue agrees with the Collector.

2. The introduction of the Mulgeni Rent Enhancement Bill has been postponed at the instance of the Government of India during the continuance of the war. If it is decided to proceed with the Bill, the Government of India will have to be addressed. Please see in this connexion Mr. Young's remarks supra and Sir Alexander Cardew's speech in the Legislative Council in connexion with a resolution on the subject. Orders are requested whether the Government of India will now be addressed to remove the bar on the proposed legislation.

W.A.K.—3-7-19.

(1) The question in issue is whether the Mulgeni Rent Enhancement Bill should be proceeded with. Collector and Board say 'Yes', as no settlement has been arrived at. If this is accepted, Government of India have to be addressed.

(2) Another issue has been raised which does not affect the main question : viz., the procedure for recovery of arrears.

Paragraph 22 of Settlement Notification states that the land should be proceeded against *in the first instance*. If the sale-proceeds are insufficient to pay for arrears, etc., the other provisions of the Rent Recovery Act may be resorted to.

There seems to be no necessity for any circular on the subject.

J. B. BROWN—4-7-19.

The question for orders is whether this Government should ask the Government of India for permission to proceed with the Mulgeni Rent Enhancement Bill.

Mulgeni is perpetual lease. The lessor (mulgar) has no power to alter the terms of the lease; thus, in certain cases in which the settlement enhanced the kist on a mulgeni land, the lessor (pattadar) has actually to pay more to Government than he gets from his tenant. The mulgars have, therefore, been calling out for legislation to enable them to throw the weight of the increased assessment on their tenants.

If they cannot get such legislation, they will probably relinquish. In some countries it would be considered quite a satisfactory thing to get rid of a number of non-cultivating landlords in this way. But the Government has got a Bill ready by which the cultivating tenant can be made to pay the increased assessment instead of the pattadar. The Bill is in flag **A**, which contains the discussions which shaped it.

Incidentally, in reporting on the question whether the proposed legislation is still necessary or not, the Collector of South Kanara has raised a side-issue. It has been ordered that in recovering land revenue on a mulgeni land, the land is to be proceeded against in the first instance. Former Collectors have understood this as including crops standing on the land, but excluding crops gathered from the land. The present Collector thinks that it should include the gathered produce. I submit that he is not right about this.

A. F. G. MOSCARDI—8-7-19.

Mr. Lancashire is clearly wrong in considering that gathered produce can be brought within the definition of the term 'land.'

The orders of His Excellency the Governor may now be taken as to whether
A | the Mulgeni Rent Enhancement Bill should not be proceeded with in the cold weather. We are practically pledged to this. I don't think any permission of the Government of India is needed, through there is no harm in informing them if we decide to proceed.

B | I should like another attempt to be made to get from the Collector some specific information as to the number of concrete cases in which difficulties are now arising between mulgars and mulgenidars which would be ended by the Bill. It has been several times suggested that the number of people affected are very few and not much worth helping, but the Collectors have given us nothing specific on this point, that I can find.

I hope to go down to Mangalore and hear both sides before taking up the Bill, if His Excellency the Governor decides that it is to be introduced.

C. G. T[ODHUNTER]—11-7-19.

B on return from circulation. For orders on **A** supra.

A.F.G.M.—11-7-19.

If any assurance has been given to these mulgars who certainly seem at present in an unfortunate position that we will rectify what is evidently a disability, we ought to go on with the Bill. I will leave it to my Honourable Colleague as to when he can bring it forward but the sooner the better.

W[ILLINGDON]—11-7-19.

With reference to Honourable Member's remarks at B supra, a draft official memorandum to the Collector of South Kanara is submitted for approval.

N.K.—12-7-19. W.A.K.—12-7-19. J. B. BROWN—15-7-19

Issue and put up again for circulation to Honourable Member.

J.B.B.—15-7-19.

[Issued as Official Memorandum No. 820 B/19-1, dated 15th July 1919.]

The Official Memorandum to the Collector has issued. The file may now be circulated to Honourable Member for perusal of His Excellency's remarks on page 2 supra.

N.K.—16-7-19. W.A.K.—16-7-19. J.B.B.—21-7-19.

A. F. G. MOSCARDI—22-2-19.

C. G. T[ODHUNTER]—22-7-19.

I noticed in the paper recently that there is to be another discussion of this question by one of the landholders' associations in Madras. Please find out when it is to be and get me a copy of all available papers as soon as possible.

C. G. T[ODHUNTER]—27-9-19.

Reference is solicited to the cutting from 'the Hindu' of 13th September 1919 which announced a meeting of the Executive Committee of the Madras Ryotwari Landholders' Association on 15th September 1919 at which a paper was to be read by Mr. B. Sitarama Rao on "the mulgeni tenure and the incidence of enhanced assessment" and Dr. U. Rama Rao's paper on the subject was also to be considered. No account of the proceedings of the meeting or of the contents of the paper referred to above has appeared subsequently.

The previous papers referred to in the Government Orders (G.O. No. 2154, dated 18th July 1912, G.O. No. 2979, dated 9th October 1913 and G.O. No. 1438, dated 16th June 1915) which were issued in connexion with the proposed legislation are put up.

W.A.K.—30-9-19. J.B.B.—1-10-19.

A.F.G.M.—3-10-19.

Please ask the Secretary of the Association if he will kindly favour me with a copy of Mr. Sitarama Rao's paper and on receipt forward it to me at Mangalore.

C. G. T[ODHUNTER]—6-10-19.

A draft demi-official is submitted for approval with reference to the Honourable Member's order above.

Demi-official—from J. B. BROWN, Esq., I.C.S., Under Secretary to Government, Revenue Department.
To—the Secretary to the Madras Ryotwari Landholders' Association, Madras.
Dated—the 8th October 1919. *No.*—820 B/19-3.

I am to request that you will be so good as to send the Hon'ble Mr. C. G. Todhunter a copy of the paper on "the mulgeni tenure and the incidence of enhanced assessment", read by M.R.Ry. B. Sitarama Rao Avargal, B.A., B.L., at the meeting of the Executive Committee of your Association which was convened for Monday the 15th September 1919.

2. If you will kindly transmit the copy to me at Fort St. George, on or before the 13th October 1919, it will be duly forwarded to the Hon'ble Mr. Todhunter in camp

W.A.K.—7-10-19.

Demi-official—from Mr. E. V. Sundara Reddi, Secretary to the Madras Ryotwari Landholders' Association.
To—the Revenue Secretary, Fort St. George, Madras.
Dated—the 14th October 1919.

Your letter dated the 8th October 1919 only reached me this morning owing to the insufficiency of the address given on the cover. I am to request you that communications may be directed to be sent in future to the Secretary, The Madras Ryotwari Landholders' Association, Ritherdon House', Vepery, Madras.

I am sending by book-post to-day six copies of the Proceedings of the Annual Meeting of the Association in which will be found Rao Sahib Dr. U. Rama Rao's paper on 'Some Anamolies of Mulgeni Tenure' and six copies of Mr. B. Sitarama Rao's paper on 'Mulgeni Tenure and the incidence of enhanced assessment."

The Executive Committee of the Association will further consider the subject next week and its opinion on the subject will be communicated to you promptly.

An informal conference was held at the Collector's office, Mangalore, on Saturday the 18th October 1919, under the presidency of the Hon'ble Mr. Todhunter, I.C.S., Member of Council, to discuss the question of the draft Mulgeni Rent Enhancement Bill. The following were among those present :—

PRESENT.

1. The Hon'ble Khan Sahib Hajee Abdulla Haji Kassim Sahib Bahadur.
2. The Hon'ble Mr. N. Subba Rao.
3. Mr. R. H. Ellis, I.C.S., Collector of South Kanara.
4. ,, A. J. Lobo, B.A., B.L., Government Pleader.
5. ,, K. Sadasiva Bhat, B.A., B.L.
6. ,, I. P. Fernandez, Retired District Munsif.
7. ,, Marian S. Pais, B.A., Revenue Divisional Officer, Puttur.
8. ,, K. C. Manavedan Raja, B.A., Revenue Divisional Officer, Mangalore.
9. ,, M. Ananthan Nair, B.A., Revenue Divisional Officer, Kundapur.
10. Diwan Bahadur M. M. Bangera, Retired District Judge.
11. Mr. U. C. Krishna Bhat, B.A., B.L., High Court Vakil.
12. ,, A. Srinivasa Poi, B.A., B.L.
13. ,, K. Sadasiva Rao, B.A., LL.B., Secretary, South Kanara District Association.
14. ,, B. Rama Rao, Taluk Board President, Puttur.
15. ,, K. Lakshminarayana Rao, B.A., B.L., High Court Vakil.
16. ,, K. P. Achuthaya, do.
17. ,, M. Lakshumana Rao.
18. ,, Muhammad Schamnad, District Board Member.
19. ,, J. V. Alvares.
20. ,, J. Naganna Hegde.
21. ,, H. Madapaya.
22. ,, K. Rajagopalakrishna Rao.
23. ,, Sivarama Karnik.
24. ,, M. Dharmanna.
25. ,, Bagganna Gurikar.

The Hon'ble Mr. Todhunter in opening the proceedings thanked the gentlemen who were present for having come to advise him on the subject of the legislation to be undertaken in order to enable the mulgars to meet the enhancement of rent which had resulted from the new settlement and which they were unable under their mulgeni leases to recover from their tenants who hold their land on a perpetual lease. He said that it was his misfortune and not his fault that he had never served in this beautiful district and so had an opportunity of becoming directly acquainted with their interesting national characteristics, one of which was represented in the system of land tenure. He assured them that the Government had no intention of interfering with their national characteristics for the purpose of forcing them all into one uniform mould and was anxious to do what it could to preserve them. The difficulty that had stood in the way of passing the necessary legislation was the difficulty of finding any general formula which would satisfy all the various classes of cases that arose. He proposed to them that the meeting should discuss the subject under three heads: firstly, the circumstances indicating the necessity for legislation; secondly, the nature of the different classes of leases in force; and thirdly, the nature of the legislation necessary which, he suggested should be tested by applying it to individual concrete cases which had arisen or were in the minds of members of the conference.

2. As regards the first point, the meeting were generally unanimous in thinking that legislation was necessary. In reply to inquiries as to why there had not been more litigation on the subject than appeared from the statistics that were available, the Hon'ble Mr. Subba Rao and Mr. Sadasiva Bhat stated that a large amount of litigation was held in suspense in the hopes that the Government were going to settle

the matter by legislation. They agreed that certain number of claims which were more than 10 years old had been liable to lapse by limitation, but urged that inasmuch as the claim was a recurring one, limitation did not operate to bar it altogether. Various schemes for dealing with the question by executive action and without resort to legislation were discussed, but the general opinion of the meeting was that none of them would be completely satisfactory.

3. In the second place, a number of concrete instances illustrating the different classes of mulgeni leases were cited by Mr. Fernandez and others. It was agreed, however, that, generally speaking, the mulgeni leases could be brought under three classes, viz., those in which the rent was in money, those in which the rent was in kind and those in which the rent was partly in money and partly in kind.

4. On the question of the nature of the legislation desirable, it was generally agreed that the mulgenidar ought to bear the bulk of the enhanced assessment and that where the lease amount was fixed in money he should bear the whole. The question whether, where the lease amount was fixed partly or wholly in kind, the landlord should also bear a part of the enhancement, proportionate to the benefit which he derived from enhancement of prices or otherwise, was discussed at some length. The sense of the meeting was in favour of debiting the landlord or mulgar with a proportion of the enhanced assessment in proportion to the benefit derived by him from the land.

5. A representative of the mulgenidars who opposed this suggestion was anxious to fix the mulgar's interest in the land with reference to the price of paddy prevailing at the time of giving the lease, but was not prepared to name a definite proportion in which the enhancement should be divided between the mulgar and mulgenidar, respectively. The general sense of the meeting was in favour of legislation on the lines of clause 8 of the draft Bill.

6. For further discussion of the details of the Bill, a sub-committee consisting of the Hon'ble Mr. N. Subba Rao and Messrs. U. C. Krishna Bhat, K. Srinivasa Poi, K. Lakshminarayana Rao, K. Sadasiva Bhat, A. J. Lobo and Mr. J. Naganna Hegde was appointed and they agreed to go into the matter in detail and wait on the Honourable Member with the result on the following day. The Honourable Member having thanked the gentlemen present for the advice given, Mr. U. Krishna Bhat tendered the thanks of the meeting for the patient hearing of their representations. The meeting then dispersed.

The matter was further discussed with the sub-committee on the 19th October at the Collector's bungalow.

After a prolonged discussion as to the principles on which the enhancement of rent was to be made, it was agreed that, owing to absence of any information with reference to which the initial income of the mulgenidar could be ascertained, it was necessary to adopt some arbitrary principle, and that the arbitrary principle which would be fairest to both parties would be to divide the enhancement in the proportion borne by the initial assessment to the final assessment, the former part to be paid by the landlord and the latter by the tenant.

2. In cases in which the initial assessment on the individual fields was not known, this should be ascertained in the manner indicated in paragraph 6 of B. Reference No. 3247-Pt./10-3, dated 23rd January 1912 (page 16 of G.O. No. 2154, dated 18th July 1912).

3. A special staff will be necessary for the ascertainment of the initial assessment and for the calculation of the proportions in which the enhancement is to be made.

4. This should be under the control of a special settlement officer, who might be a deputy collector, from whose orders an appeal would lie to the Collector.

5. Special provision should be made for the settlement of hard cases by the Collector on general principles of equity.

6. All applications for adjustment under the Act should be made within six months from a date to be fixed by notification, but the Collector should be given power to deal with cases which might occur later, on special cause being shown, the

case of suits resulting in a declaration of mulgeni right in respect of land in regard to which no mulgeni lease is actually forthcoming being specially considered. Other sufficient causes would be minority, absence from the district and the like.

7. All suits for the recovery of sums paid by tenants in consequence of the increase of assessment, whether pending or hereafter brought, should be referred to the Collector for disposal by him or the settlement officer in accordance with the principles laid down in the Act.

8. The above relates to cases in which the rents are wholly or partly in kind. In cases in which the rents are wholly in cash, the whole increase should be paid by the tenant as already agreed. Similarly for the cash portion when the payment is partly in cash and partly in kind.

9. The Bill will need to be recast in accordance with the above principles.

Add to Clause 2 (*a*).—The words 'or came into existence' after the word 'executed' in order to provide for the case in which mulgeni tenure is presumed by the Courts although there is no actual lease.

Clause 5 (2).—Amend as follows:—

The application should be made within six months from the date fixed by the Governor in Council by a notification published in the official Gazette. It shall be in such form as the Governor in Council may prescribe and shall be accompanied by such fees as may be fixed by the Governor in Council. The District Collector may, for special reasons to be recorded in writing, entertain any application presented after the date notified as above.

Clause 7 (1).—"Where the rent is payable wholly or partly in money, such whole or part shall be enhanced by an amount equal or proportionate to the excess of the new assessment over the old."

Clause 7 (2).—"Where the rent is payable wholly or partly in kind, so much of the increase in the assessment as relates to such whole or part shall be divided between the mulgar and the mulgenidar in the proportion borne by the original assessment to the final assessment on the land.

'Provided that where good cause is shown for believing that such a division would be inequitable, the District Collector may make the apportionment in accordance with general principles of equity.

"Provided further that the increase in rent shall always be in money.'

Add a new clause:—

"In cases in which the initial assessment on individual fields is not known, such assessment should be calculated by the Special Settlement Officer by apportioning the old assessment of the warg among the survey fields comprising it, according to the proportion which the settlement assessment of each survey fields bears to the settlement assessment of the whole warg."

Clause 8, *new clause* 9.—From every decision under section 6 an appeal shall lie to the District Collector and from every decision of the District Collector under section 7 an appeal shall lie to the District Court.

Clause 9.—The enhancement is determined under section 6 or section 7 or section 8 as the case may be.

Clause 9 (2).—*For* 'District Collector' *substitute* 'District Court.'

Clause 10.—From and after the date fixed in the notification issued under section 5, no suit shall lie by any mulgenidar for the recovery of sums paid in consequence of the increase in assessment and all such suits or proceedings as are pending in the Civil Courts on the date above referred to shall be referred by the Courts concerned to the Collector for disposal under this Act.

Clause 11 (3).—Omit and renumber.

The above seem to be the amendments necessary to carry out the conclusions of the conference. Please carry them out in a copy of the Bill and draft a fresh Statement of Objects and Reasons and send copies under cover of demi-officials to the Hon'ble Mr. N. Subba Rao and Dr. U. Rama Rao for favour of opinion. Let me see the drafts.

C. G. T[ODHUNTER]—28-10-19.

The amended Bill and Statement of Objects and Reasons are submitted below. They will be typed after approval by Secretary and before circulation to the Honourable Member.

J B B —3-11-19.

Demi-official—from J. B. BROWN, Esq., I.C.S., Under Secretary to Government, Revenue Department.

To—{ the Hon'ble Mr. N. SUBBA RAO, Manglore / Rao Saheb Dr. U. RAMA RAO, No. 323, Thambu Chetti Street, Madras.

Dated—26th November 1919. *No.*—820-B/19-5.

I am to enclose, for favour of your remarks, drafts of the Mulgeni Rent Enhancement Bill and of the Statement of Objects and Reasons, which have been revised so as to embody the conclusions arrived at at the informal conference held by the Hon'ble Mr. C. G. Todhunter at Bangalore on the 18th and 19th October 1919.

—

I have made some further amendments. In particular I think the provision for a Special Settlement Officer is unsuitable. It is better to give powers to the Collector and take power to delegate to whom we may think fit. Under the reformed Government it may even be thought desirable to refer cases to panchayats.

2. Please print up sharp and send copies to Mr. Couchman and Mr. Ellis also for favour of remarks. Is there any other officer of South Kanara experience whose opinion would be valuable?

3. Meanwhile please see whether a further reference to India is necessary or whether we can go ahead with the Bill at the next Council meeting after November.

4. Send copies of the press communiqué about the conference with the demi-official. Mr. Gwynn probably has spares.

C. G. T[ODHUNTER]—6-11-19.

The draft Bill with the Statement of Objects and Reasons as amended by the Honourable Member has been printed and placed below.

2. Besides Messrs. Couchman and Ellis mentioned by the Honourable Member, the following officers have experience of South Kanara:—The Hon'ble Mr. R. A. Graham, Mr. Moir, Mr. MacIver, Mr. R. B. Wood and Mr. J. K. Lancashire. Of these officers, Mr. Moir has been granted leave. It is for orders to which of the other officers the Bill will be sent for remarks in addition to Messrs. Subba Rao and Rama Rao.

J.B.B.—21-11-19.

3. As regards the question whether a further reference to the Government of India will be necessary before the Bill is introduced, it is submitted that, as the amendments now made to the Bill do not affect the principle of the Bill as accepted by India, no further reference to them appears necessary, as the war is now practically over (please see the Government of India's letter on page 2 of G.O. No. 2198, Revenue, dated 29th September 1915).

N.K.—20-11-19. W.A.K.—20-11-19. J. B. BROWN—21-11-19.

Please see the Honourable Member's remarks supra. Copies may be sent to Messrs. Couchman, Ellis, Graham, MacIver, Wood and Lancashire.

N.K.—22-11-19. W.A.K.—22-11-19. J.B.B.—22-11-19.

Eliminate Wood. He was only there for a short time as Judge, I think, others approved.

E. S. LLOYD—25-11-19.

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Demi-official—from S. W. G. I. MACIVER, Esq., Collector of Vizagapatam.

To—the Hon'ble Mr. E. S. LLOYD, I.C.S., Secretary to Government, Revenue Department.

Dated—Waltair, the 4th December 1919.

I return the draft Mulgeni Rent Enhancement Bill with a few remarks in the margin.

Section 7.

I have little acquaintance with South Kanara, but on general principles I do not see why the mulgar who receives rent in kind should need any relief at the expense of the tenant. If the expenses of cultivation have increased proportionately to the increased prices, if the gross outturn has remained the same, and if Government takes the same proportion of the net produce, then the shares of the mulgar and mulgenidar, namely, the rent less assessment and the net outturn less rent will bear the same ratio as formerly, when valued in money—

(1) Where the rent is payable wholly in money the rent shall be increased by an amount equal to the increase in the assessment.

(2) Where the rent is payable wholly in kind the rent shall be increased so as to divide the additional assessment between the mulgar and the mulgenidar in the ratio borne by the old assessment to the new assessment.

(3) Where the rent is payable partly in money and partly in kind the ratio of the money rent to the rent in kind shall be ascertained and the additional assessment on the land shall be divided into two parts in the same ratio, and the part proportionate to the money rent shall be added to the money rent, and that proportionate to the rent in kind shall be dealt with as in clause (2).

Owing, no doubt, to my own density I find that I could not understand section 7 (1) and 7 (2) without the assistance of the accompanying papers and I therefore suggest the above as more easy of comprehension

Section 7.

Why not divide the additional assessment, in the case of rents in kind, between the pattadar and tenant proportionately to benefits recently derived by each from the land? No doubt it would be difficult to ascertain what these were at the time of the introduction of the old settlement; but perhaps it would not be too difficult to ascertain roughly what they were immediately before the introduction of the new settlement. And to divide the additional burden on this basis would seem to be less arbitrary than what is now proposed.

Commutation will also be necessary for the purpose of clause (1) of section 7, so in section 12, clause 5 'section 7' may be substituted for 'section 7 (2).'

Demi-official—from the Hon'ble Mr. N. SUBBA RAO.
To—E. S. LLOYD Esq., I.C.S., Secretary to Government, Revenue Department.
Dated—Madras, 14th December 1919.

With reference to your demi-official, dated 26th November 1919, I beg to state that I have no remarks to offer as the amended Bill is in accordance with the resolutions which we arrived at the informal conference held by the Hon'ble Mr. C. G. Todhunter.

Demi-official—from Rao Sahib U. RAMA RAO, Physician and Surgeon, Madras.
To—E. S. LLOYD, Esq., I.C.S., Secretary to Government, Revenue Department.
Dated—the 18th December 1919.

I enclose herein a statement of my remarks on the draft of the Mulgeni Rent Enhancement Bill, received with your D.O. No. 820B/19–5, dated 26th November 1919.

MULGENI RENT ENHANCEMENT BILL.

Section 2, clause (*b*).

By reason of this clause, section 2 will be inapplicable to cases (i) where there has been a relinquishment by the landlord of his interest before the Act and (ii) where there has been an assignment of the landlords' interest before the Act but there are outstanding claims in respect of assessment paid by the tenant. Omission of this clause would bring those

cases within section II. Even with this clause, the definition of mulgar does require amplification as the word lessor would not, properly speaking, include the assignee of the reversion.

Section 2, clause (*c*).

Cases where the contracts have been entered into subsequently to the date fixed also should be excluded. If the tenants have had better terms than the Act is likely to allow to them, it would only be a fair reward for their sense of justice and fair play.

Section 3, clause (2).

The Act should make special provision for the apportionment of the enhanced assessment between the lessee and sub-lessee or mortgagee. Under the Bill as it stands, the lessee will be able to throw the whole liability on the sub-lessee or the mortgagee. This does not seem to be fair.

Section 7

Must fix the time from which the enhancement should take effect. It must take effect at least for the tenancy year of the application.

Sections 9 and 10.

The appeal should be in all cases to the District Judge.

Section 11.

Provision for transfer to the Collector for disposal notwithstanding, the Collector would not have power to act under section 7 unless that section is specifically made applicable for proprio vigore that section applies only to cases where there has been an application by the mulgar. To make that section applicable it must be specifically provided that "the Collector shall hereafter proceed to dispose of the case as if there was an application by the mulgar, etc. To carry out the object intended by the section the enhancement should be given retrospective effect so as to apply to the period to which the claim relates. Again, the question might arise as an issue in a suit; in such cases, the court must have power to refer the particular issue alone.

One further suggestion that I would make is—as in good many cases, the nature of the tenure is a matter of great doubt, the court should be authorized in all proper cases to remit an issue as to apportionment to the Collector irrespective of the time limit fixed in the earlier portion of the Act. The inconvenience that might result from the quality would not be felt if the suggestion as to appeal to the District Court is adopted.

(5)

Demi-official—from M. E. COUCHMAN, Esq., I.C.S., Commissioner of Land Revenue.

To—the Hon'ble Mr. E. S. LLOYD, I.C.S., Acting Secretary to Government, Revenue Department.

No.—214, dated Madras, the 18th December 1919.

Your demi-official No. 119, dated 27th November 1919. I enclose my note on the Bill.

1. Paragraph 2 (*c*) states that no order or decree of a civil court passed before the Act comes into force shall operate to prevent the application of the Act to any such lease.

In paragraph 4 of my letter at page 11 of G.O. No. 2979 of 9th October 1913, I pointed out that provision should be made to protect mulgars who, under pressure of the High Court decision, might have assumed more liability for the increased assessment than they would have done otherwise.

There were cases where the mulgenidars actually brought suits against their mulgars claiming not only the refund of the amount by which the new assessment exceeded the old rent payable by them to the mulgar, but also of the whole of the new assessment, even when this would involve not merely not paying any rent at all to their landlord but also of recovering an additional amount from the landlord.

Example.

	RS.
Old assessment	5
Old rent	10
New assessment	15

In some cases the tenants sought to recover the difference of Rs. 5 from the mulgar, who would then not only not get any rent at all, but would also be mulcted of Rs. 5 per annum so long as he remained the mulgar.

To avoid this, I believe that in a few cases the mulgar agreed to pay, for example, half the new assessment. Under the arrangement now proposed, the tenant would pay the whole increase of Rs. 10, when the rent is in cash.

In paragraph 3 of its Proceedings at page 16 of the same Government Order the Board approved of this but the point seems to have been lost sight of subsequently.

Where the mulgar, under this pressure, has actually surrendered his right to the land altogether, he would not be entitled to revoke his surrender of the land, because clause 2 (*b*) of the present Bill restricts its operation to cases where subsists at the date of the passing of the Act.

The Board (page 19 of the Government Order quoted above) did not approve my proposal to permit the mulgar to revoke his surrender of the land, and after so much time has elapsed, and subsequent transfers, etc., of land may have taken place, I do not now press for this, but I do think that where the mulgar still retains his interest in the land, he should be enabled to escape from the one-sided contract, which he entered into at a time when he had no hopes of redress, to escape persecution at the hands of the mulgenidar. Perhaps the words "or any other contract entered into between the parties" might be inserted in 2 (*c*) after the words "no order or decree of a civil court."

2. The whole difficulty is in the apportionment of the increase in assessment between landlord and tenant.

There are three cases :—

(1) Where the rent is wholly in cash.

Here the whole benefit of the rise in prices since the lease was executed (in addition to the benefit of any increase in cultivation) has accrued to the tenant, and therefore it is perfectly right that he should pay the whole increase. This was accepted in the Conference at Mangalore.

(2) Cases where the rent is paid wholly in kind.

(3) Where the rent is paid partly in kind and partly in cash.

3. The proposal in the notes of the Conference is that the enhancement is to be divided "in the proportion borne by the initial assessment to the final assessment, the former part to be paid by the landlord, the latter by the tenant."

This would seem to mean (to take a concrete case) that

	RS.
Old assessment	100
New ,, ...	150
Increase	50

Landlord will pay two-fifths of fifty and the tenant three-fifths.

The Bill itself reverses this arrangement [7 (2)]. "shall be divided between the mulgar and mulgenidar in the proportion borne by the new assessment to the old assessment on the land."

In the case given above, the landlord would have to pay Rs. 30 out of the increase of Rs. 50 and the tenant Rs. 20.

I do not consider either proposal satisfactory, inasmuch as no attempt is made to distribute the assessment in proportion to the benefits derived by each party from the land.

4. The penultimate sentence of the Notes of the Conference is as follows :—

"The above relates to cases in which the rents are wholly or partly in kind. In cases in which the rents are wholly in cash, the whole increase should be paid by the tenant as already agreed. Similarly for the cash portion when the payment is partly in cash and partly in kind."

Paragraph 7 (2) of the Bill runs "where the rent is payable wholly or partly in kind so much of the increase in the assessment as relates to such whole or part shall be divided, etc."

These two passages assume that the rent on each piece of land included in the lease is known, and that part of the holding for which cash is paid can be identified as separate from the part on which rent is paid in kind.

This assumption is incorrect. The rent of two-crop lands is usually paid in kind, but the rent of one-crop lands and of gardens is sometimes in cash and sometimes in kind, and almost every holding includes both one-crop and two-crop lands, and often bagayats as well. Two specimen mulgeni leases are attached for illustration.

It will be seen that a lump sum of money and a lump total of rent in kind is imposed on the holding as a whole. Neither tenant nor landlord would be able to say what the rent was for any particular field. It would, therefore, be impossible to distribute the increase in the assessment in the manner proposed by the Bill. The Bill is, therefore, unworkable.

I do not understand the statement made in paragraph 2 of the Notes of the Conference relating to the ascertainment of the *original income of the mulgenida*

I consider that the Bill originally drafted in 1915 is preferable to the present Bill.

(6)

Demi-official—from J. K. LANCASHIRE, Esq., I.C.S., Acting Collector of South Arcot.

To—the Hon'ble Mr. E. S. LLOYD, I.C.S., Acting Secretary to Government, Revenue Department.

No.—58, dated the 4th January 1920.

With reference to your demi-official No. 820 B/19-5, dated 26th November 1919, on the proposed Mulgeni Rent Enhancement Bill, I write to say that I am in agreement with the principles on which the Bill has been framed, and am of opinion that the Bill is necessary; but I feel some doubt about the accuracy of the drafting of section 7 (2) and submit for consideration some minor alterations in the wording of the objects and reasons in two places.

The important passage that requires study is :

"7. If the Collector..... .....he shall make an order for the enhancement of the rent on such mulgeni lease in accordance with the following provisions .....

....."

(2) Where the rent is payable wholly or partly in kind so much of the increase in the assessment as relates to such whole or part shall be divided between the mulgar and mulgenidar in the proportion borne by the new assessment to the old assessment on the land.

"Provided..... .....

....."

It seems to me that a defect in drafting arises because the phrase 'Shall be enhanced' which is the principal verb in sub-clause (1) has nothing to do with sub-clause (2) where the principal verb is "shall be divided."

The substance of the sub-clause (2) shows that it is dealing with 'enhancement' and is not dealing with 'division'. The enhancement to be made in the mulgar's rent is not the divided share of the enhancement of assessment that is to fall on the mulgar, but the divided share of the enhancement of assessment that is to fall on the mulgenidar.

To make the sub-clause (2) clear it would be preferable to introduce the verb 'enhance' as the principal verb and relegate 'divide' to a subordinate clause, but I find it difficult to frame a satisfactory draft, and have been compelled to retain 'divide' as the principal verb, reverse the proportions, and introduce a supplementary and explanatory clause explaining the enhancement.

I suggest the following :—

"When the rent is payable wholly or partly in kind, so much of the increase in the assessment as relates to such whole or part shall be borne by the mulgar and the mulgenidar

dividing it in the proportion of the old assessment to the new assessment on the land by increasing the rent by an amount which bears the same proportion to the increase relating to such whole or part, as the new assessment bears to the sum of the old and new assessments on the land."

Probably a better draft can be devised, but this conveys the meaning, while the draft Act as it stands has reversed the proportions owing to confusion between division (in incidence of the increase) and the enhancement (of the rent) necessary to have the desired net enhancement of assessment to be borne by the mulgar after payment of the full assessment by the mulgeni tenant, with the right to deduct it from the revised gross rent under section 35 of the Madras Revenue Recovery Act, 1864.

Turning to the statement of objects and reasons the two passages which require reconsideration are—

In paragraph 2.—" And is *often considerably* in excess of the rents received in their leases."

In paragraph 4.—" Difficulty in assessing the benefit derived by either party from the land at the time *of the settlement of 1819.*

The wording I suggest is—

" and is *sometimes even* in excess of the rents accrued in their leases." My impression is that such cases are rare and are traceable either to the planting up of dry land as garden, on conversion into paddy fields, or else to family settlements.

I consider it undesirable that the proposed wording should be used as it constitutes an admission by Government of a hardship more severe than I believe to exist.

I believe the hardship in the class of cases alluded to is inconsiderable, as the gross mulgeni rent even before settlement left the mulgar only a small income. I regard such cases as exceptional and not covering any large proportion of the justification for this legislation.

In clause 4 I suggest the wording " difficulty in assessing the benefit derived by either party from the land at the time *the mulgeni lease was originally granted.*"

The reference to the settlement of 1819 is inapplicable to mulgenis granted between 1819 and 1902 which may very likely be the majority of the leases in existence.

Demi-official—from Hon'ble Mr. R. A. GRAHAM, Esq., I.C.S., Chief Secretary to Government.
To—the Hon'ble Mr. E. S. LLOYD, I.C.S., Secretary to Government, Revenue Department.
Dated—dated the 4th March 1920.

I must apologize for delaying so long my answer to your demi-official No. 820 B/19-5, dated 26th November, on the subject of the Mulgeni Bill.

I am afraid I have no very recent acquaintance with the situation in South Kanara; and if I am wrong in any of my facts, I hope it will be rememberd that it is eight years since I left the district. I was Collector there however not very long after the question of the position of the mulgar came into prominence as the result of the decision of the High Court in S.A. No. 582 of 1908 and I think that it was in my time that the necessity for legislation began to be urged. It was then represented that there was urgent need of immediate legislation; that as the result of this decision, on the top of the settlement, not only were many mulgars deprived of all benefit from land which they nominally owned, but in many cases the assessment exceeded the mulgeni rent and the mulgenidars were not satisfied with paying their landlo[illegible] nothing but went to the cruel extreme of suing the mulgars personally for the recovery of the payments made in excess of the rents. The mulgar's remedy of course was to relinquish, but generally, for sentimental or other reasons, he was averse from doing so and was reduced to the necessity of paying his tenant for occupying his land.

There is no doubt that the mulgenidar the assessment on whose land exceeded his rent was in a position to make things nasty for the mulgar, and I was inclined to sympathize a good deal with the latter. Subsequent events however have made me doubt whether there is a very large number of mulgars in need of any very special treatment. I do not know in what proportion of cases the assessment exceeds the mulgeni rent; but it is admitted that in the past eight years there has been little litigation. It is stated that the parties have suspended litigation in the anticipation that the mulgar would obtain relief by legislation, but if this is so the mulgenidars as a body have shown an astonishing measure of forbearance. It is hardly credible that any large number of them would have failed to take advantage of their opportunities. Of course, it is possible that the mulgars have without question been paying the whole of the asssessment, but that this has been the general solution is not borne out by the reference, at the meeting held by the Hon'ble Mr. Todhunter, to the fact that claims were becoming barred by limitation. 'Claims' in this context must mean claims by mulgenidars for the refund by the mulgars of assessment paid in excess of the rent.

I believe it was perfectly realized at the time of the settlement that in many cases the assessment would absorb the whole of, or even exceed, the mulgeni rent, and it was anticipated that in such cases the mulgar would relinquish his patta. This eventuality was contemplated

with equanimity as bringing about the elimination of a middleman between the Government and the cultivating ryot; and the history of mulgeni, so far as it was known, was held to justify this elimination.

The mulgar is the high caste landowner often, though perhaps not habitually, an absentee; and though his rights in the land have been admitted and it may be regarded as a harsh measure to deprive him of them, it appears necessary also to protect the mulgenidar, who has been far less successful in putting forward his side of the question and has been more or less ignored in the discussions which have taken place; and I think that the suggestion of the High Court for the apportionment of the enhanced assessment, which has been followed in the proposed legislation, takes too little account of the various ways in which the tenure originated. There is no doubt that in many cases the grant of a mulgeni lease was for a consideration, material or otherwise; it may have been on account of family affection, as in the case of a marumakkatayam father desirous of providing for his own children; or it may have been for a cash payment or on the lines of a Malabar kanom. More frequently however, in all probability, the mulgeni tenant was given undeveloped land and the rent was fixed in consideration of the fact that he had to make it fit for cultivation. It must be remembered that the earlier settlements of South Kanara bore no very close relation to the extents occupied. Each man had his 'warg', the term signifying a page in the ledger on which were recorded the payments due from him; and if any measurements were given, I think I am right in saying that, when the district came to be surveyed, in the vast majority of cases, the extents in occupation were found to be largely in excess of the extents on record. The increase in the total assessment of the district, as fixed at the settlement, was due far less to the increase in the prices of produce than to the increase in the area brought on record as under occupation and cultivation It is only in the case of comparatively recent assignments that the old assessment on any individual field can really be ascertained; for the rest, for the purposes of the settlement records the total of the former assessment on the whole warg has been divided arbitrarily among the individual fields comprised in the warg in the proportion which the new assessment of each field bears to the total assessment; in fact the figures entered as representing the old assessment are entirely imaginary. The wargdar always claimed rights not only over the land in his actual occupation but also over adjoining lands up to the nettikattu, or water-shed; and much of the extension of cultivation which took place between, say, 1819 and 1890 took the form of the grant of mulgeni leases for land which had not been cultivated prior to the grant and for the occupation of which the mulgar paid no additional assessment. All the capital sunk in the land was thus the mulgenidar's and his payment of rent to the mulgar was merely an incident of the privileged position of the latter in that he in practice controlled the possession of all land adjacent to his own and could prevent its cultivation without his consent. The question is mixed up with that of kumaki; it has been a matter of dispute whether the kumaki rights in respect of mulgeni land remained with the mulgar or passed to the mulgenidar, and I am not sure what decision has been arrived at; but my impression is that Government have for many years now refused to recognize the nettikat claim and that the refusal of recognition—which involved a denial of the privileges claimed by the mulgar was a prominent feature of the settlement.

The suggestions of the High Court for the apportionment between the landlord and the tenant of the increase in the assessment are based on the assumption that the enhancement of the assessment at the settlement was due entirely to the increase of prices; but as stated above the increase of prices had less to do with the enhancement of the assessment than the ascertainment of the correct areas, and therefore the assumption, having insufficient basis in fact, cannot be taken as a starting point for an equitable apportionment. There seems to be no reason why, when the mulgar has been found to be receiving rent for a much larger area than he was supposed to own, he should not be expected to pay more in assessment than he did before the discovery was made. It was, I think, the complicated history of the question and the impossibility of finding a really equitable solution which influenced Mr Pinhey to suggest that, if any relief was to be given to the mulgars, it must be on even more arbitrary lines than those of the proposed Bill; these considerations certainly coloured the recommendations I made in a former report on the same subject. I cannot now remember the details of those recommendations, but I think the main suggestion was that the mulgar should pay one-third and the mulgenidar two-thirds of the difference between the old assessment and the new and that hard cases should form the subject of special inquiry. Seeing however that delay in legislating has caused in fact so little trouble, I am beginning to doubt whether legislation is necessary at all. The settlement went to one extreme in that it threw the whole burden of the assessment on the mulgar and in many cases threatened his extinction; the present proposal goes to the opposite extreme and would benefit him more than he has any right to expect; and of the two results I am not sure that the first is not preferable. In any case I am certain that clause 7 of the Bill as drafted will not bring about an equitable division of the responsibility.

The following demi-official to Mr. Ellis is for approval.

N.K.—8-1-20. W.A.K.—8-1-20.

Issue.

E. S. LLOYD—8-1-20.

NOTES TO G.O. NOS. 1245-46, REVENUE, 1ST JUNE 1920

Demi-official—from J. B. BROWN, Esq., I.C.S., Under Secretary to Government, Revenue Department.
To—R. H. ELLIS, Esq., I.C.S., Collector of South Kanara.
No.—820 B/19-6, dated 8th January 1920.

In continuation of my demi-official No. 820-B/19-6, dated 26th November 1919, I am to enclose copies of the opinions of Couchman and Graham on the draft Mulgeni Rent Enhancement Bill and to request that you will take them into consideration when forwarding your own opinion on the Bill. A very early reply is requested.

Demi-official—from R. H. ELLIS, Esq., I.C.S., Collector of South Kanara.
To—the Hon'ble Mr. E. S. LLOYD, I.C.S., Acting Secretary to Government, Revenue Department.
No.—Dis. 1-D/Tour, dated Camp Puttur, the 17th January 1920

In reply to your demi-officials Nos. 820-B/19-5, dated the 26th November, and No. 820-B/1916, dated the 8th January, regarding the Mulgeni Rent Enhancement Bill, I send you the following remarks upon the provisions of the Bill.

2. *Section* 2.—No provision is made for the cases where an existing lease may in the future be declared by the courts to have been all along a mulgeni lease and such cases would thus be excluded from the benefit of the Act. Such cases occur when an original oral lease has been continued for many years and the parties finally dispute whether it is chalgeni or mulgeni. I would suggest the addition to section 2 (*a*) of the words 'or which may hereafter be declared by a court to be mulgeni leases subsisting from a time prior to such date'.

3. *Section* 2 (*c*).—I quite agree with Couchman that some relief is necessary for the mulgar in cases where he has under pressure entered into a one-sided contract with his tenant and bound himself to make payments of assessment which under the Act he would not be required to do. I would suggest insertion of the words 'on any contract between the parties regarding payment of the new assessment made' after the words 'civil court passed' in section 2 (*c*). I do not think that any relief can now be given to mulgars who may have under pressure surrendered their rights altogether to the mulgenidars. This would be upsetting too much the interests which have since arisen.

4. *Section* 5.—If the proposed amendment to section 2 (*a*) is adopted, a slight amendment will be required here also. The proviso might read: 'Provided that the Collector shall in cases in which the lease may hereafter be declared by a court to be a mulgeni lease and in other cases for special reasons to be recorded in writing may entertain '.

5. *Section* 7.—Couchman has I think misunderstood the provisions of this section. It is clear that in cases of rent payable partly in money and partly in kind the enhancement in respect of the money portion is first to be determined under sub-section (1) proportionately to the excess of the new over the old assessment and the balance of the assessment is thus to be apportioned between the parties under sub-section (2). There is no necessity as Couchman seems to think to determine on which portion of the land the rent is paid in money and on which portion it is paid in kind. But that Couchman could misunderstand the section as at present worded, I think sufficiently condemns the drafting and I myself greatly prefer the form in which the section stood in the draft of 1915 which is quite clear. The only change required in that draft is to modify section 7 (2) as follows:—

7 (2). Where the rent is payable in kind, the increase in the assessment shall be divided between the mulgar and mulgenidar in the proportion borne by the old assessment to the new assessment over the land.

I presume that the reversal of the words 'new' and 'old' in section 7 (2) of the draft is a clerical slip for the intention of the Conference held at Mangalore certainly was that the tenant should bear the bigger portion of the increase.

6. I believe that the method of distributing the increased assessment in proportion to the new and the old assessments is as good an arbitrary method as can be devised. Couchman considers it unsatisfactory because it makes no attempt to distribute the assessment in proportion to the benefits derived by the parties from the land. This formula as to distribution according to benefits was laid down by the High Court and looks extremely well on paper but when one comes to analyse the benefits derived by a landlord from the land under a permanent lease, one finds that they are fixed and determined and that all increased benefits go to the tenant only. The only increased benefit accruing to the landlord is that arising out of the increase in the price of rice where rent is paid in kind and it is in consideration of this that where rents are paid wholly or partly in kind, a proportion of the increased assessment has been thrown upon the landlord. But it would be obviously quite impossible to adjust this proportion by calculations based on increases in the price of rice, as to be fair it would have to vary from year to year.

The most important case where the proposed method of distribution would prove inequitable is that pointed out by Graham, namely, where the increased assessment is due mainly to an increase in the area assessed. I can find no complete answer to his objection that in such cases

the increase should be borne by the landlord. Obviously in many cases it should be borne by the landlord and it is quite unfair to throw it upon the tenant. But in others where the landlord has leased out large areas of waste land for nominal rents, the whole benefit of the improvements accrues to the tenant and it is obviously just that he should bear the whole or the greater part of the increased assessment. It seems impossible to make any provision in the Bill for such cases. Each will have to be dealt with on its merits. I would however retain the proviso to section 7 in the new draft and add after the words 'Provided the would be inequitable' the words 'and particularly where the increase in the assessment is due to an increase in the area assessed' This would make it clear that this was one of the factors to be considered.

8. *Section* 10 (2) provides for an appeal only to the District Collector whereas section 9 gives an appeal to the District Court I do not understand the reason for this difference and would suggest transposing sections 9 and 10 and adding in the new section 10 the words or section 9' after 'section 7' in the second line and again after the words 'section 7' in the last line but one, and omitting section 10 (2).

9. Graham is of opinion that legislation is not required. But I think that all parties now are anxious to have the matter definitely settled and the only way in which this can be done is by legislation. The Conference at Mangalore composed of both landlords and tenants was unanimously in favour of legislation.

The opinions of the gentlemen * consulted on the draft Mulgeni Rent Enhancement Bill, as revised by Honourable Member after the informal Conference held at Mangalore in October 1919, will be found at pages 8 to 14 above. The Hon'ble Mr. N. Subba Rao has no remarks to offer. The remarks of the other gentlemen are dealt with below :—

The Hon'ble Mr. Graham.
The Hon'ble Mr. Couchman.
Mr. Ellis (Collector of South Kanara).
„ Lancashire (Collector of South Arcot).
„ MacIver (Collector of Vizagapatam).
Dr. U. Rama Rao.
The Hon'ble Mr. N. Subba Rao.

2. *General remarks.*—The Hon'ble Mr. R. A. Graham doubts the necessity for the proposed legislation altogether : The Hon'ble Mr. M. E. Couchman prefers the Bill of 1915 to the Bill as now drafted. It seems obvious that the proposal to drop the legislation at this stage is impracticable. The Bill of 1915 necessarily needs revision if the conclusions reached at the Conference are to be embodied in the Bill.

P.T.S.—27-1-20.

3. *Amendments suggested to particular clauses of the Bill.*—These will be set out and discussed below :

W.A.K.—31-1-20

Sectional notes below. I think it is obvious that the Bill must be proceeded with, especially in view of Mr. Ellis's remark, paragraph 9 of his letter, page 14 above.

E. S. LLOYD—10-2-20.

Yes. I should like to see a complete redraft in accordance with the orders on the sectional notes.

C. G. T[ODHUNTER]—12-2-20.

2. The provisions of this Act shall apply only to such mulgeni leases as fulfil the following conditions, namely,

(*a*) were granted or executed or came into existence prior to a date to be fixed in this behalf by the Governor in Council in respect of each taluk or other local area, Mulgeni leases to which the Act applies.

(*b*) in respect of which the relationship between mulgar and mulgenidar subsists on the date of the passing of this Act,

(*c*) do not expressly provide, in writing whether in the original lease or in any other contract entered into before the

date fixed by the Local Government under sub-clause (*a*) for the contingency of the enhancement by Government of the land revenue assessment leviable on the land forming the subject of the lease; but no order or decree of a civil court passed before this Act comes into force shall operate to prevent the application of the Act to any such lease.

Clause 2 (*a*).—Mr Ellis (Collector of South Kanara) proposes that the following words may be added at the end of this sub-clause:—

or which may hereafter be declared by a court to be mulgeni leases subsisting from a time prior to such date.'

From page 6 above, it will be seen that by the insertion of the words 'or came into existence' in the Bill as revised by him, the Honourable Member intended to provide for the class of cases referred to in the present amendment. The same expression, viz., 'which came into existence' was suggested by the Board in 1914 so as to bring *oral* leases within the scope of the Act. The expression was condemned by the Government 'as too vague' and as 'likely to raise doubts as to what was meant.' The words 'granted or executed' were finally approved and inserted in the Bill of 1915.

In paragraph 7 (*c*) and (*d*) of their memorial at page 3 of G.O. No. 2154, Revenue, dated 18th July 1912, the people of South Kanara referred to two classes of cases in which mulgenis came into existence by legal fiction, viz., (i) by prescription, i.e., the assertion of mulgeni right for the statutory period of 12 years; and (ii) by the decision of civil courts. There appears to be no objection to the addition suggested by Mr. Ellis, as it will clearly bring out all possible cases for which it is intended to provide in the Bill.

P.T.S.—3-2-20.

W.A.K.—31-1-20.

May be inserted I think.

E. S. LLOYD—10-2-20.

This is a matter of drafting. If the words 'or came into existence' cover the point sufficiently, there is no need to add to an already complex clause. The Advocate-General may be consulted.

C. G. T[ODHUNTER]—12-2-20

Clause 2 (*b*).—Dr. U. Rama Rao desires to enlarge the scope of this clause so as to include

(i) cases where there has been a relinquishment by the mulgar of his interest before the Act, and

(ii) cases where there has been an assignment of the mulgar's interest before the Act, but there are outstanding claims in respect of assessment paid by the mulgenidar.

As regards (i) above, it is submitted that it is not the intention of Government to provide for cases in which the relation of mulgar and mulgenidar had ceased to subsist on the date of the passing of the Act (see clause 2 (*b*) of the Bill of 1915 and clause (*b*) on page 22 of G.O. No. 2979, Revenue, dated 9th October 1913.)

As regards (ii) above, it is submitted that it was not proposed to deal in this Bill with any claims other than those pending in civil courts at the time of the passing of the Act. No provision was intended to be made for the recovery of sums paid either by the mulgar or mulgenidar prior to the Act. The object was not to give the Act retrospective effect which would involve adjustment of accounts from the time of the settlement (1902 to 1905) up to the passing of the Act (vide paragraph 3 (*g*) on page 24 of G.O. No. 2979, Revenue, dated 9th October 1913).

W.A.K.—31-1-20.

Proposal No. 1 was already considered and negatived. Cases of the kind referred to in item (ii) cannot be many whether the period of limitation be six months under section 59, Revenue Recovery Act, or three years under the Limitation Act and do not call for special protection. The amendment suggested may therefore be vetoed.

P. T. SRINIVASA ACHARI—3–2–20. E. S. LLOYD—10–2–20.

C. G. T[ODHUNTER]—12–2–20.

Clause 2 (*c*).—(1) Dr. U. Rama Rao desires that contracts entered into after the date fixed by the Local Government under sub-clause (*a*) should be *excluded*. The contracts referred to in clause 2 (*c*) must satisfy two conditions, viz., (i) they must have been entered into prior to a date fixed under clause (*a*); and (ii) they must contain no express provision in writing for the contingency of the enhancement. It will thus be seen that contracts entered into *subsequent* to the date fixed under clause (*a*) are already *excluded* by the Bill: Presumably Dr. Rama Rao merely means '*included*', where he says '*excluded*' and his intention is that *all* contracts referring to the contingency of enhancement should be respected and the Bill should not apply to such cases

Obviously.
P.T.S.—3–2–20.

(2) On the other hand Messrs. Ellis and Couchman consider that some relief is necessary for the mulgar in cases where he has, under pressure, entered into an one-sided contract with his tenant and bound himself to make payments of assessment which under the Act he would not be required to do.

(*a*) Mr. Couchman suggests that *after* the words 'no order or decree of a civil court', the words 'or any other contract entered into between the parties may be inserted.

(*b*) Mr. Ellis suggests *after* the same words the insertion of the following:—

'or any contract between the parties regarding payment of the new assessment made.'

The present clause (*c*) is the same as clause (*c*) of the Bill of 1915. Before that clause was drafted, the principle of respecting private contracts was sufficiently discussed. The fact was also before the Government that until the judgment of the High Court, dated 5th May 1910, became known to the people of South Kanara they had been in doubt as to the incidence of the increased assessment and entered into contracts as regards the payment of it. It is therefore for consideration whether all contracts respecting the enhanced assessment entered into before the passing of the Act should be respected as suggested by Dr. U. Rama Rao, or whether all such contracts should be over-ridden by the Act as suggested by Messrs. Ellis and Couchman. If the latter view prevails, it will be necessary to delete from sub-clause 2 (*c*) the words "entered into before the date fixed by the Local Government under sub-clause (*a*)" in addition to one or other of the amendments suggested of which that proposed by Mr. Ellis seems preferable.

W.A.K.—31–1–20.

Both the proposals seem open to objection. Dr. Rama Rao's proposal that all contracts should be respected would tell hard on those mulgars who have entered into contracts under the pressure of the decisions of the High Court and have thereby assumed a greater liability for the enhanced assessment than they would otherwise have done. The objection to the proposal of Messrs. Ellis and Couchman is the difficulty of differentiations between one-sided contracts and those that are bona fide.

The proviso under clause 7 (2) gives the settling officer power to override the principles therein laid down in deserving cases and apportion the enhanced assessment in accordance with equity. Where therefore he is satisfied that a strict adherence to the rules laid down by the Act will cause undue hardship and that the arrangement made between the parties is equitable he will doubtless give effect to that arrangement. No amendment seems called for.

P.T.S.—3–2–20.

As I understand the matter it was not intended to provide in the Act for cases where the parties have already made a settlement between themselves. Some of these may have been one-sided but it is doubtful if they should be referred. No amendment seems required.

E. S. LLOYD—10-2-20.

C. G. T[ODHUNTER]—12-2-20.

Definitions.

3. In this Act unless there is something repugnant in the subject or context

Mulgeni lessee.

(1) 'Mulgeni lease' means a perpetual lease of land whether written or oral under which a fixed rent, whether in money or kind or both, is reserved, and includes leases of the description known as 'kayamgeni', 'nigdigeni' and 'sub-mulgeni' but not 'walawarg'.

Mulgar.

(2) 'Mulgar' means the lessor of land under a mulgeni lease and includes a mulgenidar who has granted a mulgeni lease to a sub-mulgenidar or sub-tenant:

Mulgenidar.

(3) 'Mulgenidar' means a tenant of land under a mulgeni lease and includes a mortgagee in possession from such tenant.

Clause 3 (2)—Dr. U. Rama Rao urges as follows:—

(i) the definition of 'mulgar' requires amplification as the word 'lessor' would not include the assignee of the reversion.

(ii) the Act should make special provision for the apportionment of the enhancement between the lessee on the one hand and the sub-lessee or mortgagee on the other, so that the lessee may not be able to throw the whole liability on the sub-lessee or mortgagee.

As regards (i) above, it is submitted that the reversionary right of the mulgar, in the strict sense of the word 'reversion', is now a most unsubstantial right for which no provision need be made in the Bill (vide paragraph 2 of Mr. Graham's letter at page 13 of G.O. No. 2154, dated 18th July 1912). By the 'assignee of the reversion' Dr. U. Rama Rao apparently means only the 'assignee of all the interests of the mulgar'. Such an assignee virtually becomes the mulgar. If express provision is required to indicate him in the Bill, the words 'and his assigns' may be inserted in clause (2) of section 3 after the words 'lessor of land under a mulgeni lease'.

As regards (ii), it is submitted that the definition of 'mulgar' includes "mulgenidar who has granted a mulgeni lease to a sub-mulgenidar or sub-tenant", and similarly the definition of a 'mulgenidar' includes "a mortgagee in possession from a tenant of land under a mulgeni lease". A mulgenidar who tries to throw the whole liability on the sub-lessee or mortgagee ought to figure as a mulgar under the Act and the sub-lessee or mortgagee as the mulgenidar; the enhancement of the rent payable by the latter will be governed by the same rules as are applicable to original mulgars and mulgenidars. No special provision therefore seems called for.

P.T.S.—4-2-20.

W.A.K.—31-1-20.

The words 'the lessor of land under a mulgeni lease' in the definition of 'mulgar' are capable of being construed as referring to the person who originally granted the lease and as excluding his heirs and assigns. Similarly the words 'a mulgenidar who has granted a mulgeni lease to a sub-mulgenidar etc.' The definition may, it is submitted, be amended as under:—

"'Mulgar' means the lessor of land under a mulgeni lease, his heirs and assigns and includes a mulgenidar who has granted a mulgeni lease to a sub-mulgenidar or sub-tenant, his heirs and assigns."

As regards the definition of mulgenidar the words 'a tenant' seem to be sufficiently wide to include his heirs and assigns. However the matter may be made more clear by amending the definition as shown under: —

"'Mulgenidar' means a tenant of land under a mulgeni lease, his heirs and assigns and includes a mortgagee in possession from such tenant or from his heirs and assigns."

P. T. SRINIVASA ACHARI—4–2–20. E. S. LLOYD—10–2–20.

The Advocate-General may be consulted as to these amendments.

C. G. T[ODHUNTER]—12–2–20.

5. Any mulgar may make an application in writing to the Collector to make an order for the enhancement of the rent payable under a mulgeni lease of land of which he is the mulgar. **Application to enhance rent.**

Such application must be made within six months from the date fixed in this behalf by the Governor in Council by a notification published in the official gazette. It shall be in such form as the Governor in Council may prescribe and shall be accompanied by such fees as may be fixed by the Governor in Council. Provided that the District Collector may, for special reasons to be recorded in writing, entertain any application presented after the date notified as above.

Clause 5.—Mr. Ellis proposes to *substitute* the following for the existing proviso :—

"Provided that the Collector shall in cases in which the lease may hereafter be declared by a court to be a mulgeni lease and in other cases for special reasons to be recorded in writing may entertain any application presented after the date notified as above."

This is consequential on the amendment to clause 2 (*a*) which Mr. Ellis has suggested and will follow the orders passed on that amendment.

W.A.K.—31–1–20.

The clause is defective in that it does not say what the District Collector should do with the application entertained by him. If it is intended that he may either dispose of the application himself or forward it to the Collector for disposal the following may be added at the end of the clause :—

"The District Collector may deal with the application himself or transfer it to the Collector for disposal."

If the intention is that all original orders should be passed by the Collector himself, the following may be added :—

'He shall then forward the application to the Collector for disposal.'

The former course seems preferable. It is however for consideration whether it is necessary to insist on time-barred applications being presented to the District Collector and not the Collector himself in the first instance. The Collector who is given wide powers under the Bill can, it seems, be trusted to exercise his discretion properly in the matter of admitting such applications. In the amendment proposed by Mr. Ellis power is given to the *Collector* to entertain such applications. The amendment will need revision if they are to be entertained by the District Collector and if the District Collector is to dispose of them a few consequential amendments will be necessary in the other clauses of the Bill. These will be submitted after orders are passed on the note. The points for orders are—

(1) Whether the District Collector or the Collector is the authority that can entertain time-barred applications.

(2) If it is to be the District Collector, whether an exception may not be made in respect of cases where the delay has been due to the time taken by courts in deciding the nature of a lease and the Collector authorized to entertain applications presented after the due date in such cases.

[This is on the assumption that Government accept Mr. Ellis' proposal that the scope of the Bill should be extended to leases which may hereafter be declared by a court to be mulgeni leases subsisting from a time prior to the date mentioned in clause 2 (*a*).]

(3) Whether the applications entertained by the District Collector *should be* dealt with by himself, or *should be sent* to the Collector for disposal or whether the District Collector is to be allowed a discretion in the matter.

P. T. SRINIVASA ACHARI—4-2-20.

I doubt if there is any particular object in inserting the word 'District' Collector in the proviso. The word may be omitted. The District Collector can by executive orders require a reference to himself in such cases if necessary.

E. S. LLOYD—10-2-20.

I think the proviso is all right and I don't see that the District Collector's power of transferring an application to a subordinate for disposal is affected by it.

C. G. T[ODHUNTER]—12-2-20.

Principles on which enhancement is to be made.

7. If the Collector is satisfied that the mulgeni lease to which the application relates fulfils the conditions laid down in section 2 he shall make an order for the enhancement of the rent on such mulgeni lease in accordance with the following provisions:—

(1) Where the rent is payable wholly or partly in money such whole or part shall be enhanced by an amount equal or proportionate to the excess of the new assessment over the old.

(2) Where the rent is payable wholly or partly in kind so much of the increase in the assessment as relates to such whole or part, shall be divided between the mulgar and mulgenidar in the proportion borne by the new assessment to the old assessment on the land.

Provided that where good cause is shown for believing that such a division would be inequitable, the Collector may make the apportionment in accordance with general principles of equity, provided further that the increase in rent shall always be in money.

Clause 7.—This is the most important clause in the Bill laying down, as it does, the principles according to which the enhancement of rent should be made. Before setting out the drafting amendments suggested by some of the gentlemen consulted, a few *preliminary points* may be referred to. They are—

P.T.S.—4-2-20

(1) In sub-clause (2), the words 'old' and 'new' have been transposed. The mistake will be rectified.

(2) Mr. MacIver observes that provided (*a*) the outturn has remained the same, and (*b*) the Government take the same proportion of the net produce, the mulgar's share (rent *minus* assessment) remains the same whatever may be the rise in prices. The mulgar therefore requires no relief in cases where he receives *rent in kind*.

This remark need not be considered as the whole reason for the introduction of the Bill is that the Government under the settlement of 1902 took a considerably greater share of the net produce than under the settlement of 1819

W.A.K.—31-1-20.

Clause 7 (2).—At page 5 above it was apparently decided at the conference that as regards rent paid in kind the enhancement would be divided in the proportion borne by the initial assessment to the final assessment, the former to be borne by the landlord the latter by the tenant. The draft Bill reverses the order. This is considered a mistake. As pointed out by Mr. Ellis, it was the intention that the tenant should bear the greater proportion. See also Mr. Couchman's note. The old assessment must be less than the new. If the proportion is 2 to 3 the mulgar will bear two-fifths of the enhancement the mulgenidar three-fifths. Assuming that it is decided that the mulgar shall bear the lesser share the words 'new' and 'old' must be altered into 'old' and 'new.'

E. S. LLOYD—10-2-20.

Yes. I wrote 'original' and 'final.'

C. G. T[ODHUNTER]—12-2-20.

Clause 7 (3).—Mr. MacIver next asks why, in the case of *rents in kind*, the additional assessment should not be divided in proportion to the benefits *recently* derived by each party from the land, as for example immediately before the settlement of 1902.

The answer to this is that the mulgenidars will object to such a division, for the mulgar will derive an undue advantage by being given a share in the improvements effected by the mulgenidars from the time of the grant. Vide in this connexion paragraph 5 of the notes of the conference.

W.A.K.—31-1-20.

Mr. MacIver's proposal will involve the determination of the net produce which for the reasons given by Mr. Couchman in his letter, dated 30th October 1912, is not quite practicable—paragraph 8 at pages 12 and 13 of G.O. No. 2979, dated 9th October 1913.

P. T. SRINIVASA ACHARI—4-2-20. E. S. LLOYD—10-2-20

C. G. T[ODHUNTER]—12-2-20.

Clause 7 (4).—Mr. Couchman considers that the provisions of the Bill are unsatisfactory because in cases where rent is paid wholly or partly *in kind*, no attempt is made to distribute the assessment in proportion to the benefits derived by each party from the land. This objection is met in paragraph 6 of Mr. Ellis' note on page 14 above. It has, moreover, been agreed at the conference that to ascertain what this benefit was exactly at the time of the original lease is practically impossible and that the distribution should therefore be made under some rule more or less arbitrary. The rule of proportion between the old assessment and the new has therefore been adopted in the Bill.

W.A.K.—31-1-20. P.T.S.—4-2-20.

The distribution must be arbitrary and no better rule can be devised.

E.S.L.—10-2-20. C. G. T[ODHUNTER]—12-2-20.

Clause 7 (5).—Messrs. Couchman and Graham point out that it will be impossible to distribute the assessment between the mulgar and mulgenidar in the manner proposed in the Bill, because

(i) the old assessment on individual fields cannot be ascertained, except in comparatively recent cases;

(ii) the figures entered as representing the old assessment are entirely imaginary the wargdar having occupied between the years 1819 and 1890 a good deal of land which he gave out on mulgeni lease and for which he paid no additional assessment to Government; and

(iii) the part of the holding for which cash rent was paid cannot be identified and distinguished from the part which paid rent in kind.

As regards objections (i) and (ii) it is submitted that, as observed by Mr. Ellis, it is not possible to satisfactorily meet these objections. A general rule has been laid down in clause 8 of the Bill which applies to cases where the initial assessment on individual fields is not known. Where the application of the rule will be inequitable, the only remedy is to deal with each case on its merits under the discretion vested in the Collector by the proviso to clause 7.

As regards objection (iii), it does not seem to matter whether the portions of the holding paying cash and grain rents respectively can be identified or not so long as the total enhancement of the cash portion of the rent can be determined proportionately to the excess of the new assessment over the old assessment and the enhancement in respect of the rent in kind can be worked out on the basis of the proportion between the old assessment and the new—vide paragraph 5 of Mr. Ellis' note on page 14 above.

W.A.K.—31-1-20.

P. T. SRINIVASA ACHARI—4-2-20. E. S. LLOYD—10-2-20.

C. G. T[ODHUNTER]—12-2-20.

Specific suggestions as to the amendment of clause 7 of the Bill.—May next be considered.

(i) Dr. U. Rama Rao suggests that the time from which enhancement of rent should take effect should be provided for and that it may be fixed as 'the tenancy year of the application'.

It is submitted that a provision of this kind is necessary. But it may be more appropriately inserted in clause 10 of the Bill. After the words 'or section 9 as the case may be' the words 'shall take effect from the beginning of the revenue year next after the final order or decision and' may be inserted. Cf. section 177 of the Estates Land Act, 1908. A decree for enhancement can ordinarily have no retrospective effect.

W.A.K.—31-1-20.

The final decision may take many years and it will be a hardship to the mulgar if the enhancement is to take effect as suggested in the office-note. Dr. Rama Rao's proposal that it should take effect from the revenue year in which application was made seems reasonable and may be accepted.

The date from which the revision of rent is to take effect may be put in as a separate section under section 10 so that it might apply not only to enhancement made with reference to the assessment fixed at the last settlement but also to revision of rent necessitated by future settlement for which provision is made in section 10.

P.T.S.—4-2-20. E.S.L.—10-2-20

C. G. T[ODHUNTER]—12-2-20

(ii) Messrs. MacIver, Lancashire and Ellis would recast all or some of the sub-clauses of clause 7 as follows:—

(*a*) Mr. MacIver would substitute the following for clauses (1) to (3):—

(1) Where the rent is payable wholly in money the rent shall be increased by an amount equal to the increase in the assessment.

(2) Where the rent is payable wholly in kind the rent shall be increased so as to divide the additional assessment between the mulgar and the mulgenidar in the ratio borne by the old assessment to the new assessment.

(3) Where the rent is payable partly in money and partly in kind the ratio of the money rent to the rent in kind shall be ascertained and the additional assessment on the land shall be divided into two parts in the same ratio, and the part proportionate to the money rent shall be added to the money rent, and that proportionate to the rent in kind shall be dealt with as in clause (2).

(*b*) Mr. Ellis would substitute the following clauses (1) to (3):—

(1) Where the rent is payable in money it shall be enhanced by an amount equal to the whole of the excess of the new assessment over the old.

(2) Where the rent is payable in kind, the increase in the assessment shall be divided between the mulgar and the mulgenidar in the proportion borne by the old assessment to the new assessment over the land.

(3) Where rent is payable partly in money and partly in kind, the proportion that the money rent bears to the total rent shall be ascertained and the money rent enhanced by the same proportion of the increase in the assessment. The reminder of the increase in the assessment shall be apportioned by the Collector in accordance with the principle stated in sub-section (2).

Provided that where good cause is shown for believing that such a division would be inequitable and particularly where the increase in the assessment is due to an increase in the area assessed, the Collector may make the apportionment in accordance with general principles of equity, provided further that the increase in rent shall always be in money.

(*e*) Mr. Lancashire would replace existing sub-clause (2) by the following :—

(2) "When the rent is payable wholly or partly in kind, so much of the increase in the assessment as relates to such whole or part shall be borne by the mulgar and the mulgenidar dividing it in the proportion of the old assessment to the new assessment on the land by increasing the rent by an amount which bears the same proportion to the increase relating to such whole or part, as the new assessment bears to the sum of the old and new assessments on the land

The opinion seems strong that it will make for clearness if (*a*) rent wholly in cash, (*b*) rent wholly in kind, and (*c*) rent partly in cash and partly in kind are dealt with in separate clauses. If it be decided to adopt that course, the clauses may be as suggested by Mr. Ellis.

W.A.K.—31-1-20.

The three classes of cases may be dealt with separately.

Mr. Ellis' draft is open to the objection pointed out by Mr. Lancashire in regard to the clause as drafted in the Bill.

In sub-section (2) and in the second sentence of sub-section (3) the principal verbs are 'shall be divided' and 'shall be apportioned' while the sub-sections are intended to deal with enhancement of rent not division of assessment. Mr. Ellis' amendment therefore needs revision.

Mr. Ellis proposes to retain the existing proviso with an amendment the object of which is to indicate that increase in assessment due to increase in area is one of the factors to be considered He does not however put in the other equally important case, viz., of large areas of waste land leased for nominal rents. It would seem to be better to make mention of these cases in the statement of objects and reasons under the proviso. The amendment proposed by Mr. Ellis to the proviso may be omitted.

Page 14 of the note above.
P.T.S.

In this case the mulgar should bear a larger proportion,
P.T.S.
and here the mulgenidar.
P.T.S

Clause 7 begins with the words 'If the Collector is satisfied etc.,' which would properly speaking appear in clause 6 which deals with the determination of enhancement.

Clauses 6 and 7 may be amended as under:—

"Clause 6. On receiving an application under section 5 the Collector shall hold an enquiry and if he is satisfied that the mulgeni lease to which the application relates fulfils the conditions laid down in section 2, shall in accordance with the provisions of the next following section determine what enhancement, if any, shall be made in the rent payable in respect of the mulgeni lease."

"7. (1) Where the rent is payable in money it may be enhanced by an amount not exceeding the whole of the excess of the new assessment or the old.

(2) Where the rent is payable in kind the increase in the assessment shall be divided between the mulgar and mulgenidar in the proportion borne by the old assessment to the new assessment on the land and the rent enhanced by an amount equal to the mulgenidar's share of the increase in the assessment.

(3) Where rent is payable partly in money and partly in kind, the proportion that the money rent bears to the total rent shall be ascertained and the money rent enhanced by an amount not exceeding the same proportion of the increase in the assessment. The remainder of the increase in the assessment shall be apportioned in accordance with the principal stated in sub-section (2) and the mulgenidar's share shall be added to the rent. Provided that when good cause is shown for

believing that such a division would be inequitable the Collector may make the apportionment in accordance with general principles of equity, provided further that the increase in rent shall always be in money"

In section 7 (1) the words 'may' and 'not exceeding' have been substituted for 'shall' and 'equal to' with reference to the suggestion of the Government of India in their letter recorded in G.O. No. 2198, dated 29th September 1915. In consequence of this amendment the words 'an amount not exceeding' are inserted in sub-section (3).

P. T. SRINIVASA ACHARI—4-2-20.

The proposed amendment makes for clearness and may I think be approved but I am not sure that Mr. Ellis' proposed addition to the proviso should be omitted and merely drawn attention to in the statement of objects and reasons. Increase in area is a very important point to be considered—vide Mr. Graham's note supra. Mr. Ellis' proposed addition is of the words "as for instance when the increase in the assessment is due to an increase in the area assessed" and possibly may properly be inserted.

E. S. LLOYD—10-2-20.

As amended.

C. G. T[ODHUNTER]—12-2-20.

Mode of ascertainment of old assessment.

8. In cases in which the initial assessment on individual fields is not known, such assessment should be calculated by the Collector by apportioning the old assessment of the warg among the survey fields comprising it according to the proportion which the settlement assessment of each survey field bears to the settlement assessment of the whole warg.

Clause 8.—It is submitted for consideration whether for the word 'warg occurring twice in this clause, the word 'Kudutala' will be substituted

The old 'warg' extended over a number of villages and the new assessmer varies in different villages according to locality, nature of soil, etc. A Kudutala i an individual holding which may be a warg or part of a warg. Whereas the ol assessment on a Kudutala can be easily ascertained, the old assessment on a 'warg cannot be ascertained. Please see in this connexion paragraph 7 of Board's Proceed ings on page 18 of G.O. No. 2979, Revenue, dated 9th October 1913, and paragrap 3 (*d*) on page 23 of the same Government Order.

W.A.K.—31-1-20. P.T.S.—4-2-20.

Please see the references above noted. The point is for orders. 'Warg' is t more commonly used expression but Kudutala is the more exact it seems.

E.S.L.—10-2-20.

Why not 'holding'?

C. G. T[ODHUNTER]—12-2-20.

Appeal.

9. From every decision under section 6 by an officer other than the District Collector an appeal shall lie to the District Collector and from every decision of the District Collector under section 6 or section 7 an appeal shall lie to the District Court.

Enhancement of rent to remain in force until assessment is varied.

10. (1) The enhancement in rent determined under section 6 or section 7 or section 8 or section 9 as the case may be shall remain in force unless and until the assessment is varied, when on application made by the mulgar or the mulgenidar the Collector may direct such

further enhancement or such reduction as may seem equitable, having regard to the nature and extent of the variation in assessment.

(2) From every decision under sub-section (1) by an officer other than the District Collector an appeal shall lie to the District Collector.

Clauses 9 *and* 10.—(1) Dr. U. **Rama Rao** suggests that an appeal should lie to the District Court in *all* cases. The Bill, as drafted, does not provide for an appeal to the District Court in the class of cases contemplated by clause 10.

(2) Mr. Ellis aims at the same point by the amendments he suggests. He wishes to transpose clauses 9 and 10, omitting sub-clause (2) of clause 10 and making some consequential amendments in the existing clause 9 (proposed clause 10). The clauses proposed by Mr. Ellis are as follow:—

9. The enhancement in rent determined under section 6 or section 7 or section 8 as the case may be—vide here the amendment suggested under clause 7 supra, i.e., the insertion of the words 'shall take effect from the beginning of the revenue year next after the final order or decision and'—shall remain in force unless and until the assessment is varied when, on application made by the mulgar or the mulgenidar, the Collector may direct such further enhancement or such reduction as may seem equitable having regard to the nature and extent of the variation in assessment.

10. From every decision under section 6 or section 7 or section 9 by an officer other than the District Collector an appeal shall lie to the District Collector and from every decision of the District Collector under section 6 or section 7 or section 9, an appeal shall lie to the District Court.

It may be noted that there is no provision in the above new clauses which correspond to 'or in section 9' in the existing sub-clause (1) of clause 10; i.e., the new clauses omit a reference to orders passed on appeal from the decisions under clauses 6, 7, or 8. To remedy this defect the words 'or in appeals therefrom' may be added after section 8 in clause 9 of Mr. Ellis' draft above.

The question whether an appeal should lie to the District Court in *all* cases is however one for orders. If it may, Mr. Ellis' draft may be accepted with the amendment suggested above.

W.A.K.—31-1-20.

E.S.L.—10-2-20.

Clauses 9 and 10 may be transposed as suggested above. They also need re-drafting for the following reasons.

Clause 9.—(i) The reference to the decision of the District Collector under section 6 is not correct because that section makes no mention of the District Collector.

(ii) There is no decision of the District Collector under section 7. In fact section 7 lays down the principles to be followed in arriving at a decision but the actual passing of the decision is under section 6.

(iii) It is not clear whether the appeal to the District Court is from the original order of the District Collector or from the order passed by him on appeal also.

Both I think.

E.S.L.—10-2-20.

A re-draft of the clause will be submitted after orders are passed on point (iii) above and also on the points raised regarding the jurisdiction of the District Collector.

Presumably the intention is that an appeal should lie to the District Court against every order of the District Collector whether original or passed on appeal.

As regards point (ii) above, viz., that there is no order of the District Collector under section 7, it is submitted that, the Honourable Member originally intended that the power conferred by the proviso under the section should be exercised by the into District Collector but in the draft Bill the words 'District Collector' were

corrected 'Collector'. Consequent amendment was not made in clause 9 and this accounts for the erroneous reference in clause 9 to the order of the District Collector under clause 7.

Clause 10.—This clause refers to the enhancement in rent determined under "section 6 or section 7 or section 8 or section 9."

As already pointed out the enhancement is determined under section 6 and not under section 7 which lays down only the guiding principles: so the reference to section 7 seems incorrect. Then again section 8 does not deal with the enhancement of rent but with the apportionment of old assessment of the warg among the survey fields comprising it.

P. T. SRINIVASA ACHARI—4-2-20. E. S. LLOYD—10-2-20.

I think it is sufficient to give one appeal in each case.

C. G. T[ODHUNTER]—12-2-20.

Reference to Collector of pending proceedings in Civil Courts by mulgenidars for the recovery of sums paid in consequence of increase of assessment.

11. From and after the date fixed in the notification issued under section 5 no suit shall lie by any mulgenidar for the recovery of any sum paid in consequence of the increase in assessment and all such suits or proceedings as are pending in the Civil Courts on the date above referred to shall be referred by the courts concerned to the Collector for disposal under this Act.

Clause 11.—(1) Dr. U. Rama Rao suggests that provision should be made in the Bill authorizing the Collector to exercise his powers under section 7 in connexion with cases transferred to him under this clause.

It is submitted that this suggestion relates to the procedure to be followed by the Collector in the discharge of a duty imposed on him under the Act. Provision has already been made for this in sub-clause (4) of clause 12 of the Bill.

W.A.K.—31-1-20.

I submit there is some force in Dr. U. Rama Rao's argument. His point is that the Collector can take action only on application from the mulgar (section 5) and unless there is a special authorization to that effect he is precluded from taking action on proceedings referred to him by the court. The following words may be added at the end of the section:—

"The Collector shall thereupon proceed as if an application had been made to him under section (5)."

P.T.S.—4-2-20. E.S.L.—10-2-20.

C. G. T[ODHUNTER]—12-2-20.

(2) Dr. U. Rama Rao suggests also that, in order to carry out the object in view, the enhancement ordered in the pending cases transferred to the Collector "should be given retrospective effect so as to apply to the period to which the claim relates'

Pending suits must be either—

(*a*) suits filed by the *mulgar* by virtue of the terms of the lease enabling him to recover the excess assessment from the mulgenidar; or

(*b*) suits filed by the *mulgenidar* to recover from the mulgar, under section 35 of Act II of 1864, the assessment on the land paid by him to Government on behalf of the mulgar.

It would seem that in both these cases the Collector must proceed to decree the claim as if he were a civil court under the general law as it stood at the time of the institution of the suit. All that clause 11 of the Bill does is to merely change the forum and avoid dual jurisdiction after the Act comes into force. Rules as to how the Collector should proceed in these cases may be provided for under clause 12 (4) of the Bill.

W.A.K.—31-1-20.

The date of transfer may be regarded as the date of application in which case the enhancement will take effect from the revenue year in which the transfer was made if my suggestion that enhancement may take effect from the revenue year in which application was made is approved.

P. T. SRINIVASA ACHARI—4-2-20. E. S. LLOYD—10-2-20.

C. G. T[ODHUNTER]—12-2-20.

(3) Dr. U. Rama Rao wants also that the tribunal created by the Bill should act as a court of reference to which civil courts may in any suit pending before them make a reference about a particular issue, if that issue happens to be one relating to the question of enhancement of rent by apportioning the increased assessment between the mulgar and the mulgenidar. It is not clear what cases Dr. U. Rama Rao has in mind. They are perhaps cases arising out of mortgages. Whatever they may be, the suggestion seems to be one which goes beyond the scope of the present Bill.

W.A.K—31-1-20.

What Dr. Rama Rao means apparently is that the suits and proceedings before civil court might involve other issues also and that in such cases the court should try those other issues and refer to the Collector only the issue regarding the recovery by the mulgenidar of the enhanced assessment paid by him. For instance the mulgenidar in his plaint avers that the lease is a mulgeni lease, that he paid the assessment owing to the default of the mulgar and that he is entitled to recover it. The mulgar contends that the lease is not mulgeni but chalgeni. The nature of the lease will be one of the issues in the case which the civil court must try. As regards the amount sought to be recovered the court is competent to adjudicate upon so much of the claim as relates to the old assessment and it is the claim in respect of the excess of the new assessment over the old that the court is precluded from trying and that should be referred to the Collector. To make the point clear clause (11) may be amended as under :—

" 11. From and after the date fixed in the notification issued under section 5 no suit shall lie by any mulgenidar for the recovery of any sum paid in consequence of the increase in assessment and all suits or proceedings pending in the civil courts on the date above referred to in so far as they relate to the recovery of any such sum shall be referred by the courts concerned to the Collector for disposal under the Act."

P.T.S.—4-2-20. E.S.L.—10-2-20.

C. G. T[ODHUNTER]—12-2-20.

12. The Governor in Council may (after previous publication) make rules consistent with this Act :— **Power to make rules.**

(1) fixing the date specified in section 2 ;

(2) prescribing forms and the mode of service of notices under this Act ;

(3) fixing the fees, costs and charges to be paid in respect of proceedings under this Act ;

(4) prescribing the procedure to be followed by the Collector in the discharge of any duty imposed on him by or under this Act ;

(5) providing for commutation and apportionment under section 7 (2) ;

(6) generally for carrying out the purposes of this Act.

Clause 12.—Mr. MacIver suggests that, in sub-clause (5) of clause 12, ' section 7 ' may be substituted for ' section 7 (2)'. As *rent in kind* is referred to in sub-clause (1) as well as sub-clause (2) of the existing clause 7, commutation will be

necessary under both the sub-clauses. The suggested amendment may, it is submitted, be carried out unless it be decided to split up the existing two sub-clauses of clause 7 into three as suggested in which case, it will be necessary to refer only to the two sub-clauses (2 and 3) which will refer to rent paid wholly or partly in kind.

P.T.S.—4-2-20.

W.A.K.—31-1-20.

In sub-clause (4) the words 'or the District Collector' may be inserted after the word 'Collector'

P. T. SRINIVASA ACHARI—4-2-20. E. S. LLOYD—10-2-20.
C. G. T[ODHUNTER]—12-2-20.

2. In S.A. No. 229 of 1907 a Full Bench of the High Court of Madras has decided that when the *mulgar* or *mulgeni* landlord is the registered pattadar, a mulgeni tenant who has paid the assessment on his lands in order to release them from attachment and prevent their sale is entitled under section 35 of the Madras Revenue Recovery Act, 1864, to deduct such payments from the rent due to his landlord under the terms of the lease. As the law stands, therefore, the whole burden of the increased assessment must be borne by the *mulgeni* landlord, who is the registered holder. The position of the majority of the *mulgeni* landlords is thus a difficult one. They are responsible for the payment of an assessment which bears no relation to, and is often considerably in excess of, the rents reserved in their leases, and they are powerless to alter those rents.

Paragraph 2 of Statement of Objects and Reasons.—(1) Mr. Lancashire suggests that the words 'and is sometimes even in excess of the rents accrued in their leases' may be substituted for the words 'and is often considerably in excess of the rents reserved in their leases'. His reason is that the former expression implies that the hardship is more severe than is actually the case and such cases are besides rare.

It is submitted that the amendment suggested may be carried out, but the word 'accrued' may be replaced by the word 'reserved'

P.T.S.—4-2-20.

W.A.K.—31-1-20. E.S.L.—10-2-20.
C. G. T[ODHUNTER]—12-2-20.

4. The scheme of the Bill is to enable landlords whose lands were leased on *mulgeni* tenurss before the recent settlement to apply to the Collector to enhance the rent payable on the lands by an amount not exceeding the difference between the old and the new assessment. The method proposed for the distribution of the increase is the most equitable that can be arrived at in view of the difficulty of assessing the benefit derived by either party from the land at the time of the settlement of 1819.

Paragraph 4 of Statement of Objects and Reasons.—(2) Mr. Lancashire suggests that for the words 'difficulty in assessing the benefit derived by either party from the land at the time of the settlement of 1819', the words 'difficulty in assessing the benefit derived by either party from the land at the time the mulgeni lease was originally granted' may be substituted. His reason is that the majority of the leases in existence are very likely to be those granted between 1819 and 1902. This suggestion may also be accepted.

P.T.S.—4-2-20.

W.A.K.—31-1-20 E.S.L.—10-2-20.
C. G. T[ODHUNTER]—12-2-20.

Clause 7 which deals with the principles on which rents are to be enhanced derives its origin from the judgment of the High Court in S.A. No. 582 of 1908 in which Justices Miller and Sankaran Nair laid down the following principles:—

"The theory of enhancement being that the Government takes a share of the increased value of the produce due to increase in prices, it would follow that prima facie the tenant should pay the enhanced assessment if he pays fixed a money rent to the landlord. But where, as here, the rent is paid in kind or partly in kind, so that both the landlord and the tenant lose a proportion of the increased value of the produce, it seems equitable that the enhanced payment should be shared between them, the landlord paying that proportion of the increase which is equal to the proportion which he receives of the produce: in other words each party should pay in this, as in other cases, in proportion to the benefit he derives from his interest in the land."

The application of the general principle in cases where the rent is payable in kind wholly or in part will involve some difficulty. The exact proportion of the benefit derived by the mulgar and the mulgenidar at the time the mulgeni lease was originally granted is not ascertainable in most cases at this distance of time. Any principle of apportionment that may be adopted must therefore be more or less arbitrary. As the benefits arising from enhanced prices and other causes were taken into consideration in fixing the assessment at the resettlement it is proposed to apportion the enhancement between the mulgar and the mulgenidar in the proportion which the original assessment bears to the final assessment on the land. To provide for hard cases it is proposed to invest the Collector with discretion to intervene and make an equitable settlement in cases to which the arbitrary rule is not fairly applicable.

Clause 10.—Subsequent to the decision of the High Court above referred to, many *mulgeni* tenants have brought suits to recover sums which they have paid in discharge of the assessment in excess of their rents. It is not considered necessary to give the Act retrospective effect so far as closed transactions are concerned; but to avoid inconsistency and the possibility of double remedies it is thought desirable to provide that all such suits and appeals pending at the time of the notification issued under section 5 of the Act shall be referred to the Collector for disposal under the Act.

With reference to the suggestion that increase in assessment due to increase in area and the leasing of large area of waste on nominal rents may be mentioned in the Statement of Objects and Reasons as instances where considerations of equity may necessitate a departure from the rules the following amendment is submitted for approval.

For the last sentence of sub-paragraph 3 *substitute* the following:—

"To provide for hard cases as, for instance, where the increase in assessment is due to increase in area or where large areas of waste land were leased out for nominal rents, it is proposed to invest the Collector with discretion to intervene and make an equitable settlement in cases to which the arbitrary rule is not fairly applicable."

P. T. SRINIVASA ACHARI—4-2-20.

May be approved whether any addition is made to the proviso or not.

E. S. LLOYD—10-2-20.

C. G. T[ODHUNTER]—12-2-20.

A revised draft Bill, with a revised Statement of Objects and Reasons, is submitted with reference to the Honourable Member's order on page 15 above. The notes under clauses 5 and 8 of the revised draft are for orders.

2. A draft official memorandum to the Advocate-General is also submitted with reference to the Honourable Member's orders.

W.A.K.—19-2-20 P.T.S.—20-2-20

Issue official memorandum.

After issue Honourable Member for perusal of the revised draft Bill.

E.S.L.—22-2-20.

C. G. T[ODHUNTER]—23-2-20.

Demi-official—from R. H. ELLIS, Esq., I.C.S., Collector of South Kanara.
To—the Hon'ble Mr. E. S. LLOYD, I.C.S.; Acting Secretary to Government, Revenue Department.
Dated—Camp Udipi, the 15th March 1920.

In continuation of my demi-official No. 187-D., Revenue, dated 17th January 1920, I have a few remarks to add regarding section 8 of the proposed Mulgeni Rent Enhancement Bill.

I find that in some cases the mulgars and mulgenidars when settling the terms of the mulgeni leases have already arrived at an agreement as to the amount of the old '*sarasari*' assessment which is to be apportioned to the land leased. Provision should, I think, be made in the section that in such cases the arrangement arrived at between the parties must be adhered to. I also find that in other cases for purposes of calculating increment remission the Settlement officer has already calculated the amount of the old assessment leviable upon the mulgeni holding. It should be made clear that where this has already been done the Collector is not required to make the calculation afresh.

Please see the demi-official from the Collector of South Kanara above. Clause 8 of the draft Bill makes provision for the ascertainment of the initial assessment on a field in cases where such assessment is not known. The two classes of cases to which Mr. Ellis refers in his demi-official are cases in which the initial assessment is known. Clause 8 of the Bill will not therefore apply to them. The clause does not appear to require revision.

W.A.K.—20-3-20. P. T. SRINIVASA ACHARI—20-3-20.

Point this out to the Collector and ask if he still thinks any alteration necessary.

E. S. LLOYD—25-3-20.

The following demi-official is submitted for approval.

K.R.—26-3-20. W.A.K.—29-3-20. P.T.S.—29-3-20. E.S.L.—8-4-20.

Demi-official—from the Hon'ble Mr. E. S. LLOYD, I.C.S., Acting Secretary to Government, Revenue Department.
To—R. H. ELLIS, Esq., I.C.S., Collector of South Kanara.
Dated—the 8th April 1920. *No.*—820-B/19-7.

With reference to your demi-official, dated 15th March 1920, suggesting that clause 8 of the Mulgeni Rent Enhancement Bill may be amended so as to exclude cases in which the apportionment of the old assessment on individual fields has already been made either by agreement between the mulgar and the mulgenidar or by the Settlement officer in connexion with increment remission, I am to state that the clause in question makes provision only for cases in which the initial assessment on survey fields is *not known*. The two classes of cases to which you refer seem to be cases in which the initial assessment is known and clause 8 of the Bill will not therefore apply to them. I am to inquire whether you still consider any alteration necessary.

Demi-official—from the Collector of South Kanara.
To—N. E. MARJORIBANKS, Esq., I.C.S., Temporary Additional Secretary to Government, Revenue Department.
Dated—the 18th April 1920. *No.*—Dis. 1093-D.

In reply to your demi-official No. 820-B/19-7, dated the 8th April, regarding the Mulgeni Rent Enhancement Bill I should like to point out that I was careful in my letter of 15th March to refer not to the assessment on individual fields but to the assessment on the mulgeni holding. My point is that although the assessment on the mulgeni holding may have already been settled between the parties themselves or by the Settlement officer the assessment on individual fields is still not fixed and that therefore in spite of the existing arrangement the Collector would be compelled under clause 8 as it stands at present to go into the calculation afresh in accordance with the method now laid down and would probably arrive at a different conclusion and have to upset the existing arrangement. In the two classes of case which I contemplate the assessment on individual fields is not known and clause 8 would, I believe, apply.

From the Advocate-General, Opinion No. 448, *dated* 27*th April* 1920.

The Advocate-General has replied to Official Memorandum, dated 22nd February 1920. The Collector of South Kanara has also replied to the demi-official at page 29 above. The following remarks are submitted :—

Paragraph 1 *of the Advocate-General's letter* (*clause* 2 (*a*) *of the Bill*).—The Bill is intended to apply even to cases of mulgeni leasehold rights acquired by adverse possession. The definition of the words 'mulgeni lease' as including oral leases—expressed or implied—and the words 'came into existence' and 'which may hereafter be declared by court . . . . .' are sufficient to cover all possible cases. Attention is invited to the notes on pages 15 and 16 supra. However as the matter is one of mere drafting, the amendment suggested by the Advocate-General may be accepted.

P.T.S.—12-5-20.

In order to provide for cases of adverse possession the Advocate-General would alter 'leases' into 'tenures' and 'granted' into 'created or acquired.' There would seem to be no objection.

He would apparently omit the words in italics in clause 2 (*a*) of the Bill.

E.S.L.—12-5-20

C. G. T[ODHUNTER]—15-5-20

Paragraph 2 of the Advocate-General's letter (clause 2 (b) of the Bill).—Clause 2 (*b*) was intended to exclude cases where mulgars, as a consequence of the decision of the High Court, have surrendered their rights. In view of clauses 5, 9 and 10, the provision may not be quite necessary because obviously on the date of application the applicant must be a mulgar and the relationship should continue till the order of enhancement takes effect. However the provision makes for clearness and may remain.

P. T. SRINIVASA ACHARI—12-5-20.

As the Advocate-General does not think the clause required, it may perhaps be omitted.

E. S. LLOYD—12-5-20.

C. G. T[ODHUNTER]—15-5-20.

Paragraph 3 of the Advocate-General's letter (clause 2 (c) of the Bill).—The reason why contracts entered into subsequent to the date of jamabandi, which is the date contemplated in the Bill, are not saved is that they were entered into at a time when the Civil Courts were generally inclined to the view that the enhancement should be borne by the mulgar. Such contracts would be one-sided having in all probability been entered into by mulgars under the pressure of Civil Courts' decisions. The Advocate-General seems to be under the impression that the provision is intended for the protection of the mulgenidars, whereas it is meant more for the protection of mulgars than mulgenidars. The Advocate-General may be informed accordingly.

P.T.S.—12-5-20

I think so.

E.S.L.—12-5-20.

C. G. T[ODHUNTER]—15-5-20.

Paragraph 4 of the Advocate-General's letter (clause 3 of the Bill).—The Advocate-General may be asked to draft a definition of the expression 'mulgeni tenure.' In the definition of mulgar and mulgenidar the word 'representatives' may be inserted after the word 'heirs' as suggested by the Advocate-General.

E.S.L.—12-5-20.

P.T.S.—12-5-20.

As the Advocate-General does not like the word 'leases', he may be asked to define mulgeni *tenure*, mulgar and mulgenidar respectively.

E.S.L.—12-5-20

C. G. T[ODHUNTER]—15-5-20.

Paragraph 5 of the Advocate-General's letter (clause 4 of the Bill).—The amendment to clause 4 may be accepted and the words 'by the Act' inserted between Collector' and 'upon.'

P.T.S.—12-5-20. E.S.L.—12-5-20.

C. G. T[ODHUNTER]—15-5-20.

Paragraph 6 of the Advocate-General's letter (clause 5 of the Bill).—The Advocate-General suggests that sub-paragraph 2 of clause 5 should be omitted. He is of opinion that in a large number of cases the nature of the tenure will have to be settled by Civil Courts and consequently there is no advantage in fixing any period of limitation for the filing of applications. He thinks that it is to the interest of the mulgar to apply for relief as promptly as possible. It is not clear why the Advocate-General considers that disputed cases would be numerous. There appears to be one distinct advantage in fixing the period for putting in applications, viz., that all cases requiring settlement will be brought to the notice of the Collector within the time prescribed. Then the Collector can at once deal with cases in which the existence of the tenure is admitted. Where a dispute as to tenure is raised, the Collector will refer the parties to a Civil Court and no separate provision as to reference to Court seems necessary for this purpose (as the Advocate-General appears to think) so long as the Bill does not oust the jurisdiction of Courts in such matters. The admission of applications presented after the prescribed date owing to the question of tenure having been pending before Courts is provided for in clause 5 of the Bill as drafted.

If the Civil Court decides the nature of the tenure and the exact date of its acquisition, the Collector will act upon the decision. If on the other hand the Civil Court merely declares the nature of the tenure and does not fix the date of its acquisition, the Collector will do this under clause 6. The Advocate-General may be informed that Government consider it necessary to retain the clause as it is.

P. T. SRINIVASA ACHARI—12-5-20.

I am inclined to agree with this view. The sub-clause may be retained.

E. S. LLOYD—12-5-20.

I agree. The legislation is designed to deal with a special set of circumstances and we must have some finality.

C. G. T[ODHUNTER]—15-5-20.

Paragraph 7 of the Advocate-General's letter (clause 7 of the Bill).—The Advocate-General's suggestions may be accepted.

P.T.S.—12-5-20.

If this is considered necessary the terms old and new assessment may be defined in clause 3. The other suggestions may be accepted.

E.S.L.—12-5-20.

I don't think the clause will make sense with the words 'for believing' omitted. Otherwise I agree.

C. G. T[ODHUNTER]—15-5-20.

Paragraph 9 of the Advocate-General's letter (clause 11 of the Bill).—The Advocate-General assigns no reasons for his suggestions. Clause 11 may stand as drafted.

P.T.S.—12-5-20.

This is for orders. Possibly it would be best to make decisions appealable to the District Court in all cases.

E.S.L.—12-5-20.

I think I would let the clause stand.

C. G. T[ODHUNTER]—15-5-20.

Paragraph 10 of the Advocate-General's letter (clause 12).—The Advocate-General is labouring under a certain amount of misconception in thinking that the date fixed in the notification under section 5 may sometimes be in 1902. The date in the notification is the date from which the period of six months should be calculated and must be some date after the passing of the Act. It can never be 1902. As regards pending suits, they must be suits by mulgenidar against the mulgar. There can be no pending suit by the mulgar because before the passing of the Act the legal liability to pay the assessment was upon the mulgar. As the principle underlying the Bill is that the major portion of the enhanced assessment should be borne by the mulgenidar the hardship that the mulgenidar will suffer by his being deprived of the claim in regard to past payments would be inappreciable. The clause does not affect execution proceedings, that is to say proceedings for the execution of decrees *already passed*. The clause does not seem to require any revision.

P.T.S.—12-5-20.

The Advocate-General's difficulty seems to be this. On transfer of a suit to the Collector he will proceed *as if* an application had been made under section 5, but the date of the suit may be much previous to the date fixed by notification under that section. He can only revise the rent from the date of the transfer. What becomes of the claim for the intermediate period. It would apparently have to be cancelled. Can this be done?

E.S.L.—12-5-20.

Explain to the Advocate-General exactly what it is we want to achieve and ask him to draft.

C. G. T[ODHUNTER]—15-5-20.

In his demi-official at page 29 ante, Mr. Ellis explains that his demi-official dated 16th March 1920 referred to cases in which assessment on mulgeni *holdings*, as distinguished from *individual* fields, is known. Mr. Ellis' point is not intelligible.

If the assessment on the entire mulgeni holding is known, it has only to be apportioned among the fields comprising it in the ratio of the settlement assessment of each field to the settlement assessment on the holding. This is exactly what clause 8 requires.

P. T. SRINIVASA ACHARI—12-5-20.

This seems correct. If the individual assessment is not known it must be calculated as provided for in the Bill.

E. S. LLOYD—12-5-20.

Mr. Ellis' point seems to me to be a good one. Clause 8 refers to 'cases in which the assessment on individual fields is not known'. There may be cases in which arrangements for distributing the assessments on holdings have been arrived at, but on a basis different to that suggested in clause 8. These could not be treated as cases in which the assessment on individual fields was known and the Collector might therefore be compelled to apply a mode of apportionment different to that already applied by the parties themselves. The point may be sent to the Advocate-General.

Remarks on the above lines may be communicated to the Advocate-General whose offer to redraft the Bill may be accepted.

C. G. T[ODHUNTER]—15-5-20.

Will Mr. P. T. Srinivasa Achari draft please?

E.S.L.—17-5-20.

Draft official memorandum to the Advocate-General is submitted for approval

P.T.S.—18-5-20. E.S.L.—19-5-20.

Issued as Official Memorandum No. 820 B/19-9, dated 19th May 1920.

Opinion of the Hon'ble the Advocate-General, dated 25th May 1920.

The Mulgani Rent Enhancement Bill, revised in accordance with the Advocate-General's opinion is submitted. If the Bill, as revised, is approved, it may be transferred to the Legislative Department for further action, which is (i) to publish the Bill under Rule 33 of the Business Rules and (ii) to address the Government of India (Legislative Department) and the Secretary of State with reference to clauses (1) and (2) of Instruction 2 on page 118 of the Legislative Council Manual. With reference to instruction 1 (4) on page 118 of the Manual, the Legislative Department may inform the Government of India that the Executive Department concerned of the Government of India has not been addressed in this case as to the policy of the Bill, as the policy has already been approved by the Government of India in the Department of Revenue and Agriculture in their letter No. 1037-2402, dated 2nd September 1915, and that the immediate introduction of the Bill in the Local Council was then deferred, as advised by the Government of India, until after the war (page 2 of G.O. No. 2198, Revenue, dated 23th September 1915).

2. If the Bill is dealt with in the usual course, a period of two months shall have to elapse between the date when it is forwarded to the Secretary of State and the date of its introduction in the Council. In Mr. P. T. Sreenivasa Achariyar's note on page 10 of Lodged No. 3926 D and 4043 D of 1919, dated 7th April 1920, it was suggested, however, that the Bill might be dealt with as an urgent measure under Instruction 5 (*d*) on page 120 of the Legislative Council Manual. The Honourable Member's remarks on page 13 of the same paper left this point for future consideration. If it be decided to proceed with the Bill under Instruction 5 (*d*), Legislative may be informed that the reason for the urgency has already been intimated to the Government of India in this Government's letter No. 1438-A., dated 16th June 1915, and that the lapse of time since has not tended to ease the situation in South Kanara as no *modus vivendi* has been arrived at in the interval between the mulgars and the mulgenidars and that there has been a loud demand for this legislation from the public of South Kanara. For orders.

W.A.K.—26-5-20. J. B. BROWN—27-5-20.

Please see the Advocate-General's opinion and the Bill as corrected in accordance therewith. The only possible omission I note is that he has not defined 'old and new assessment'. It is for orders if this is necessary. Perhaps not.

The Bill may now be sent to Legislative for further action. With reference to the remark in the office-note above, I do not see how it is possible to treat it as an urgent measure. I think it should be reported to the Secretary of State and the ordinary two months allowed. It can still be introduced in the present Council.

E. S. LLOYD—28–5–20.

I have made an addition to the preamble to explain what is meant by the 'old' and 'new' assessment respectively.

2. In clause 10 it is not clear whether the revision of rent is to take effect from the beginning or the end of the revenue year. I have made it at the beginning.

3. I don't quite understand the Advocate-General's remarks on clause 12. I have, however, amended the clause to the effect that the date of plaint should be treated as the date of application. This seems to be better than providing the revision of rent is to take effect from date of transfer.

4. I have made some corrections in the Statement of Objects and Reasons.

5. The usual letters to the Government of India and the Secretary of State should be got off at once and I think we might ask them specially to let us know early whether there is any objection to our proceeding with the Bill, as we must bring it in by the August meeting at the latest.

6. Please send me a clean proof of the Bill as early as possible and have the whole file printed up. The matter has gone through so many changes that I am not sure we may not have slipped into errors in one or two places.

C. G. T[ODHUNTER]—29–5–20.

Draft sharp.

E.S.L.—29–5–20.

With reference to paragraph 5 of the Honourable Member's remarks above, a draft order and a draft letter to the Government of India (Revenue and Agriculture) are submitted for approval.

On receipt of the Government Order with notes, Legislative will, in the usual course, address the Secretary of State and the Government of India, Legislative Department, and also take steps to publish the Bill in time for its introduction at the Legislative Council meeting in August 1920; and to secure this object, Legislative will no doubt instruct the Superintendent, Government Press, to publish the Bill and its translations * as a special supplement to the *Fort St. George Gazette*, if necessary.

* Kanarese is the language of the district. Perhaps Legislative will publish in Malayalam as well, as Malayalam is spoken in the Kasaragad taluk.

2. After issue of the Government Order and the letter, the file will be printed up very urgently at the Government Press, Madras, and clean proofs of the Government Order and the Bill will be called for urgently, i.e., within a week.

Yes.

J.B.B.—1–6–20.

N.K.—31–5–20. W.A.K—31–5–20.

J. B. BROWN—1–6–20.

E.S.L.—1–6–20.

[G.O. Nos. 1245–46, Revenue, dated 1st June 1920.]

With reference to paragraph 6 of the Honourable Member's note above, a proof copy of G.O. No. 1254, Revenue, dated 1st June 1920, is submitted, which contains a copy of the Bill with the Statement of Objects and Reasons—vide pages 23 to 27 of the Government Order.

N.K.—16–6–20. W.A.K.—16–6–20.

This is not a very clean proof: but as the type stands in Madras I submit it for circulation in order to avoid delay.

J.B.B.—16–6–20. E.S.L.—17–6–20.

I have made a few slight corrections which may be carried out in the proof.

I hope the Bill will be published as soon as legislative formalities permit.

C. G. T[ODHUNTER]—20–6–20.

~~E.S.L.—21–6–20.~~

Sent to Enclosures

Sent AT-10 (a)—4,256—25-9-18. (6)

GOVERNMENT PRESS 4 JUN 1920

Revenue DEPARTMENT.

Bill

The Mulgeni Revl. Enhancement Bill — transferred to the Legislative dept for further action — Govt of India addressed.

READ AGAIN G.O. No. ....., dated 191

" " " " ..... " 191

READ ALSO:— u 259 B/4-1 dy 21.2.4.

C. No. ....., From the Board (CR) Bgm, No. 753 mis, dated 14.6.4. 191

on 820 B/4-1 dy 15.7.4.

Cir of S. Kanara Rg No 302 dy 15.10.4

" " ..... " " ..... " 191

on 820 B/4-6 dy 23.2.20

584 B/20 Addl. Secl- Op No 448 dy 27.4.20

on 820 B/4-9 dy 4.5.20

683 B/20 " Addl. Secl " Op " 25.3.920 191

ORDER.

No. 1265, dated 1-6-1920 91

Press

Secret

to Legve only.

The Mulgeni Revl-Enhancement Bill with the Statement of Objects & Reasons, is transferred to the Legislative Department for further action.

2/. The following letter will be despatched to the Govt of India.

Secy 3/11

31.5.20

Letter No. 1266 dt/1-6-20

To

The Secy to the Govt of India,

Dept of Revl & Agrl

Sir,

I am directed to request a reference upon

2 Ro Opn 3/1

DESPATCHED = 1 JUN 1920 to Legislative only by

To The Legislative Dept with Copies of Bill, Statt of Objects & Reasons & letter to Govt of India

DESPATCHED 18 JUN. 1920

To The Board of Revenue with Copies of Bill & Statt of Objects & Reasons d-R.

1 Copies 2 60 Letters

DESPATCHED = 1 JUN 1920

1.7.20

Read

The Hon'ble Mr. Kershaw's

to letter No. 1037-2402, dated 2.9.1915, in which the Govt. of India's approval of the provisions of the draft Mulgeni Rent-Enhancement-Bill submitted with the Hon'ble Mr. L. Davidson's letter No. 1438-A, dated 16.6.1915, was communicated with the observation that as the measure was likely to be contentious its introduction into the Local Legislative Council should be deferred until after the war. The introduction of the Bill was accordingly postponed: and although nearly five years have elapsed since then, no Modus Vivendi has yet been arrived at between the Mulgars and the Mulgeni-dars of the South Kanara dt. in regard to an equitable distribution of the increased assessment imposed at the re-settlement of the district in 1902, ~~and~~ The situation continues as difficult to the Mulgars as before. There have

33

358

have been representations by public and interested associations in the Legislative Council urging the speedy introduction of the proposed measure. The Hon'ble Mr. C. C. Todhunter discussed the matter at an informal Conference, on the 18 & 19 October 1919, with some of the leading gentlemen of South Kanara representing all the interests involved and a revised Bill has been drawn up in accordance with the conclusions of the Conference which, it is hoped, will be acceptable to all parties. I am to add that the revised Bill involves no change of principle, but only embodies in itself the procedure, accepted at the Conference in regard to the method of apportionment of the enhanced assessment between the Mulgas & the Mulgenidar which, in the Bill as originally drafted, was left to be dealt with by rules framed under the Act.

2/ The revised Bill is

being submitted separately to the Secretary of State and the Govt. of India in the Legislative Department. It is intended to introduce the Bill at the meeting of the Legislative Council to be held in August 1920 and I am to request that, if the Govt of India have any objections to the Bill being proceeded with as proposed above, they will be pleased to intimate their objections as early as possible.

3/ A copy of the revised Bill, with the Statement of Objects & Reasons, is enclosed.

I have, Etc.

S/
G.O.W

WAK
31.5.20

EN 1/6/20

Government of Madras

REVENUE DEPARTMENT

G.O. No. 1245, 1st June 1920

Bill

The Mulgeni Rent Enhancement Bill — transferred to the Legislative Department for further action — Government of India addressed.

READ—the following papers :—

I

Official Memorandum No. 259-B/19-1, Revenue, dated 21st February 1919.

With reference to the correspondence ending with Mr. Vibert's letter Dis. No. 442-D/17 (Confdl.), dated 18th February 1917, in connexion with the Mulgeni Rent Enhancement Bill, the Collector of South Kanara is requested to submit through the Board of Revenue a report whether any *modus vivendi* has since been arrived at between the mulgars and mulgenidars which would render legislation unnecessary. He is also requested to state whether there is any urgent necessity to introduce the proposed measure now.

(By order)

F. J. NOBES,
Under Secretary to Government.

To the Collector of South Kanara.
,, Board of Revenue (Land Revenue).

II

Proceedings of the Board of Revenue (Land Revenue), Mis. No. 755 (Confdl.), No. 71, dated 14th June 1919.

The Hon'ble Mr. L. T. HARRIS, I.C.S.,
Commissioner of Land Revenue and Income-tax.

Read—the following paper :—

Letter—from J. K. LANCASHIRE, Esq., I.C.S., Collector of South Kanara.
To—the Secretary to the Commissioner of Land Revenue and Income-tax.
Dated—the 2nd May 1919.
No.—Ref. on G.B.R. 302 (Confdl. No. 3).

In reply to Government Memorandum No. 259-B/19-1, dated 21st February 1919, I have the honour to report that no *modus vivendi* has since been arrived at between the mulgars and the mulgenidars which would render legislation unnecessary and I see no prospect of any such amicable settlement. The dispute is of such a nature that it can only be set at rest by explicit legal enactment.

2. The position has recently been complicated by orders passed by my predecessor Mr. Vibert under which he laid down that the word 'land' in section 22 of the Settlement notification for South Kanara district, dated 3rd November 1902, can, in no circumstances, be extended to cover gathered produce of the land in whosoever's custody it may be (copy of order enclosed).

This order arose out of two cases, in one of which gathered products (i.e., rice muras of mulgeni patta land and in another the movables of the mulgeni tenant were attached for arrears due from the mulgars in respect of mulgeni lands. In the first case, rice muras had been attached from the possession of the sub-tenant who cultivated the land under the mulgenidar and in other movables had been attached from the possession of the mulgeni tenant.

Up till 1918, it had been the practice to take 'land' to be attached for arrears of revenue due on mulgeni land as per paragraph 22 of the Settlement notification, dated 3rd November 1902, to include its products also. Gathered products were not, however, specifically excepted. This was based on the orders passed by Mr. MacIver in 1905 (copy enclosed) and more particularly on the order of Mr. Robertson, Dis. No. 297-R./Ver., dated 13th June 1905 (copy enclosed).

I am in doubt whether Mr. Vibert's interpretation of section 22 of the Settlement notification and rule 14 of the Memorandum for guidance of Revenue Department, dated 18th April 1904, is correct. Rule 14 runs:—

"*Mulgeni holdings.*—When a separate mulgeni patta has been granted at settlement, the assessment cannot be collected by the attachment of the movable property of either the pattadar or the tenant. The pattadar should first be asked to pay the assessment and in the event of his failing to pay the tenant should be requested to pay. In the event of neither party paying the kist, the land should be proceeded against without delay."

Section 2 of the Madras Revenue Recovery Act (II of 1864) lays down—

"The land, the buildings upon it and its products shall be regarded as the security for the public revenue."

I doubt whether there was any intention in section 22 of the Settlement notification or in rule 14 of the Memorandum for guidance of Revenue Department, dated 18th April 1904, to whittle away Government's rights in the matter of security for the land revenue as the facilities for collecting it so far as the land, the buildings on it and its products are concerned.

In ordinary parlance the movable property attached under section 8 of the Madras Revenue Recovery Act has a more specialized meaning than the wide legal interpretation, which covers all crops after severance from the land, which is essential to any use of them as security for the revenue.

Up to date, action under the circulars of Mr. MacIver and Mr. Robertson has reduced to very small dimensions the obstruction to the collection work arising from the special concession in the case of mulgeni lands, but at present it is impossible to forecast what trouble may be in store in future from Government being forced to land sale in the case of mulgeni pattas, if this circular of 1918 is allowed to stand.

My opinion is that there was no intention of curtailing Government's rights under section 2 of the Madras Revenue Recovery Act, but merely with regard to household movables, etc., unconnected with the land.

In these circumstances the experience of the past is no guide to what difficulties Government may encounter from mulgeni tenure in future.

I request orders whether my interpretation of section 2 of the Madras Revenue Recovery Act, section 22 of the Settlement notification and rule 14 of Memorandum for use of Revenue Department is correct, or Mr. Vibert's.

I am so convinced of the mischief likely to result from Mr. Vibert's circular that I am cancelling it, but if the Board and Government decide that he was right, I shall republish it. (I enclose a copy of the orders I am issuing, my justification being that if this collection season closes with the order still in force, it will increase future difficulties in collection work.)

In any case I think the deadlock between mulgar and mulgenidar should be terminated by legislation as early as possible.

Resolution—Mis. No. 755 (*Confdl. No.* 71), *dated* 14*th June* 1919.

Submitted to Government.

2. The Board considers that the Collector's view as to the necessity for the proposed legislation is sound and supports his proposal that the legislation may be undertaken as early as possible.

3. In regard to the question of selling gathered products of the land held on mulgeni tenure, the Board considers that Mr. Vibert's order is correct. Produce after it is removed from the land must be held to be movable property and the sale of such property is opposed to the directions contained in paragraph 22 of the Settlement notification.

Mr. Lancashire has not stated what troubles he anticipates by the adoption of Mr. Vibert's circular. His order cancelling that circular should clearly be withdrawn.

(True extract)

H. R. Pate,
Secretary.

To the Secretary to Government, Revenue Department.

Enclosures

(1)

Proceedings of the Collector of South Kanara, Dis. No. 297-R./Ver., dated 13th June 1905.

[*Reference.*—Udipi Tahsildar's report Dis. No. 561 D/Rev., dated 4th June 1905, soliciting instructions whether the produce of the lands on mulgeni pattas cannot be distrained for the realization of the land revenue arrears accruing thereon.]

Order.—The word 'land' as used in paragraph 22 of the Settlement notification, dated 3rd November 1902, may be taken to include its products also as the object with which the land was ordered to be proceeded against in the first instance will not be defeated by this course. There is, therefore, no objection to proceed against the products of mulgeni lands for the recovery of the arrears due thereon.

J. H. Robertson,
Collector.

(2)

Letter—from S. W. G. I. MacIver, Esq., I.C.S., Acting Collector of South Kanara.
To—Rev. Father A. Macry, s.j., Vicar of the Rosario Cathedral, Mangalore.
Dated—the 22nd August 1905.
No.—Dis. 412 R./Ver.

With reference to your letter dated the 1st instant, I have the honour to state that I do not understand your objection to the Deputy Collector's order. The rule in the case of mulgeni land is that in the first instance the land is to be proceeded against; this of course includes crops standing on the land. The Deputy Collector's order is therefore correct.

(3)

Letter—from S. W. G. I. MacIver, Esq., I.C.S., Acting Collector of South Kanara.
To—Rev. Father A. Macry, s.j., Vicar of the Rosario Cathedral, Mangalore.
Dated—the 1st October 1905.
No.—Dis. 500 R./Ver.

Referring to your letter dated 23rd September 1905, I have the honour to state that the land revenue is the first charge on the land and crops growing on it and that no arrangements made between the pattadar and the tenant can affect this.

2. I do not see what bearing the interpretation of words in the Revenue Recovery Act can have on the present question; by departmental order it is directed that in the case of mulgeni leases a separate patta is to issue to the landlord and that for arrears the land is to be proceeded against in the first instance; but for this rule the landlord's other movable property might be proceeded against in the first instance and that is what I understand the rule to prohibit.

(4)

Proceedings of the Collector of South Kanara, Dis. No. 140-R./Rev., dated 29th May 1918.

Read—This office Circular Dis. No. 297-R-Ver., dated 13th June 1905, regarding the collection of arrears of assessment due on mulgeni lands.

Order.—Although the word 'land' as used in paragraph 22 of the Settlement notification, dated 3rd November 1902, includes standing crops, it can under no circumstances be extended to cover gathered produce in whosoever's custody it may be. Gathered products of mulgeni lands cannot, therefore, be attached for the recovery of arrears of revenue due thereon.

2. The order read above is hereby cancelled.

L. Vibert,
Collector.

(5)

Circular—from J. K. Lancashire, Esq., I.C.S., Acting Collector of South Kanara.
To—the Divisional officers, Tahsildars and Deputy Tahsildars.
Dated—Mangalore, the 2nd May 1919.
No.—Ref. on G.B.R. No. 302.

Under section 2 of the Madras Revenue Recovery Act (II of 1864) "the land, the buildings on it and its products shall be regarded as the security of the public revenue."

Collection work of assessment on mulgeni pattas will be conducted on the basis of this section of law.

Circular Dis. No. 140-R/Rev., dated 29th May 1918, is cancelled.

III

Official Memorandum No. 820 B/19-1, Revenue, dated 15th July 1919.

In connexion with his report, reference on G.B.R. No. 302, dated 2nd May 1919, on the necessity for the introduction of the Mulgeni Rent Enhancement Bill, the Collector of South Kanara is requested to furnish at an early date specific information as to the number of concrete cases in which difficulties have arisen between mulgars and mulgenidars. It has been suggested that the number of people affected is small.

2. Mr. Lancashire's definition of the term 'land' occurring in paragraph 22 of the Settlement notification approved in G.O. No. 917, Revenue, dated 9th October 1902, is incorrect and his circular dated 2nd May 1919 should be withdrawn.

(By order)

J. B. Brown,
Under Secretary to Government.

To the Collector of South Kanara.
Copy to the Board of Revenue (Land Revenue).

IV

Letter—from R. H. Ellis, Esq., I.C.S., Collector of South Kanara.
To—the Secretary to Government, Revenue Department.
Dated—Mangalore, the 15th October 1919
No.—Ref. G.B. 302 Rev.

In reply to Memorandum No. 820 B/19-1, dated 15th July, asking for information as to the number of concrete cases in which difficulties have arisen between mulgars and mulgenidars, I have the honour to state that I have consulted Divisional officers, Tahsildars and District Munsifs on the matter.

2. I append a list of cases in which difficulties have arisen between the parties. I also enclose copies of judgments in cases of the kind reported by the District Munsifs of Udipi and Karkal and copy of a communication from the Karkal Bar Association to the District Munsif, Karkal.

3. The Tahsildar, Mangalore, reports that in that taluk mulgeni holdings represent about 14 per cent of the occupied area of the taluk and that in 30 per cent of these holdings difficulties are likely to arise. The Tahsildar, Kasargode, reports eight cases from that taluk during the last three years. The Divisional officer, Coondapoor, reports that in that division there may be about 500 cases where the rent is less than the settlement assessment and about 2,000 cases in which the settlement assessment is more than the original assessment, but equal to or less than the mulgeni rent in both of which classes trouble is likely to occur between the parties.

4. The District Munsifs, Kasargode and Puttur, report that no case of the kind involving a dispute between mulgar and mulgenidar has been filed in their courts. The District Munsif, Udipi, reports three cases since 1st January last. The District Munsif, Coondapoor, gives seven cases which have been incorporated in the list appended. The District Munsif, Karkal, reports that he has recently come across four cases of the kind, while the District Munsif, Mangalore, gives a list of seven cases in 1904, seven in 1905, eight in 1906, eleven in 1907, thirteen in 1908, five in 1909, one each in 1910 and 1913, two each in 1914 and 1915, four in 1916 and one each in 1918 and 1919.

5. The inquiry has had to be completed within a month and must therefore be regarded as necessarily incomplete. Further, so far as statistics from the courts are concerned, it must I think be considered that the cases actually filed are often of the nature of test cases and probably represent a considerable number of cases whichwere settled on similar lines and never came to court at all.

Enclosures.

(1)

IN THE COURT OF THE DISTRICT MUNSIF OF KARKAL.

Present:

M.R.Ry. P. Narayana Menon Avargal, B.A., B.L.

Thursday, the 26th day of June 1919.

Original Suit No. 123 of 1919.

J. C. Aranha ... ... *Plaintiff*

Kaitan Minguel Lorence Aranha ... ... *Defendant*

This suit coming on for final hearing on Wednesday, the 25th day of June 1919, in the presence of Mr. E. Vasudevayya, vakil for the plaintiff, and of Mr. K. Santhaya Kamath, vakil for the defendant, and having stood over to this day for consideration, the court delivered the following :—

Judgment.

The plaintiff who is the *mulgeni* tenant under the defendant sues to recover from the defendant personally and also by the sale of his *muli* right in the plaint mentioned property Rs. 8-12-7 being the amount of *tirwa* with interest, paid by the plaintiff over and above the rent due to the defendant in the years 1916 to 1918.

2. The main allegations in the plaint are these: The plaintiff is a *mulgeni* tenant of the plaint mentioned properties belonging to the defendant and included in his *patta* No. 24 of Chitrapur village. He is liable to pay in all a *mulgeni* rent of Rs. 10-0-0 and As. 5 for cesses per annum to the defendant. The Government assessment of the said *mulgeni* lands is more than the rent payable by him to the defendant. As the defendant did not pay the assessment from 1916 onwards, it was collected by the Government officials from the under-tenants of the plaintiff and he had to give credit to the assessment paid by the tenants from the rents payable by them. As the defendant did not pay the amounts paid by the plaintiff through his tenants with interest thereon at 12½ per cent per annum in spite of the plaintiff's notice dated 18th June 1917 demanding payment, he (the plaintiff) is entitled to recover the excess sum due to him after setting off the rent due to defendant towards the amount paid as assessment, and he is entitled to recover the said sum and interest thereon personally from the defendant and on the responsibility of the defendant's *muli* right in the suit properties.

3. The defendant admits that the rent payable by plaintiff is Rs. 10 per annum but does not admit the correctness of the amount payable for cesses. He then alleges that the *tirwa* of the properties was increased on account of the improvement effected by the tenants and by other persons, and that he does not admit that the assessment is more than the rent, that it was paid by plaintiff's tenants and credited to them in the rents payable by them. Finally he contends that he is not liable to pay the assessment paid by plaintiff's tenants, that the plaintiff is not entitled to claim interest, that the plaintiff is not in any case entitled to a decree on the responsibility of the properties, and that the suit is not maintainable on the small cause side.

4. The following issues were framed by my predecessor :—

I. Whether the *tirwa* was paid in the suit years by plaintiff or his agents ?

II. What is the correct amount due to plaintiff ?

III Whether plaintiff can charge interest ?

IV. Whether the plaintiff is entitled to the charge claimed ? If not, is the suit maintainable on the regular side ?

V. To what relief is plaintiff entitled ?

5. *First issue.*—This is a suit by a *mulgeni* tenant against his landlord for the recovery of assessment paid by him. The landlord is admittedly the *pattadar* and he is liable to pay the Government assessment. The question for decision is whether the plaintiff or his agent paid the assessment in the years 1916, 1917 and 1918. The plaintiff has examined his *chalgani* tenant, *P. W.* 1 to prove that she paid the assessment of the suit years. She deposes that she paid the assessment in two years when the village officials threatened to distrain her movables and obtained receipts from them. The plaintiff has produced *Exhibits A*, *A*-1 *to* *A*-3 which are receipts granted by village officials to *P. W.*1 for the payment of assessment. She has proved them. It is seen from *Exhibits A*, *A*-1 and *A*-2 that

she paid the assessment in order to avoid distraint. These *Exhibits* relate to the payment of assessment of the years 1916 and 1917. *Exhibit A*-3 is the receipt for the payment of assessment of 1918. The plaintiff has given credit to these payments in the rent payable to him by *P.W.* 1. *Exhibits* B and B-1, the receipts passed by the plaintiff to *P.W.* 1 for the payment of the rents of the suit years show that he has given credit to the amount paid by *P.W.* 1 as assessment. The defendant does not say that he has paid the assessment of the suit years. It is admitted that the *mulgeni* holding appertains to *patta* No. 24 standing in the name of the defendant. It is also evident that *Exhibits A* to *A*-3 relate to the payment of assessment for the properties included in *patta* No. 24. The payment of *tirwa* by the plaintiff's tenant during the suit years for the holding No. 24 standing in the name of the defendant is therefore proved. I find the first issue in the affirmative.

6. *Second issue.*—It is seen from *Exhibits A* to *A*-3 that plaintiff's tenant paid Rs. 12-10-8 in 1916, Rs. 12-11-0 in 1917, and Rs. 12-11-0 in 1918 as assessment for the *mulgeni* lands in *patta* No. 24. It is also seen from *Exhibit C* that the rent and cesses payable to defendant by plaintiff amount to Rs. 10-5-0 per annum. The plaintiff has deducted the rent and cesses payable by him to defendant from the assessment and has claimed only the balance due to him in each of the said years. I find that the amount claimed in the plaint is correct.

7. *Third issue.*—The plaintiff has paid the assessment of the suit years through his tenant for and on behalf of the defendant and the defendant is liable to reimburse the plaintiff the amount paid by him. In such a claim the plaintiff is in my opinion entitled to charge interest on the amounts paid by him for the defendant. The plaintiff was allowed interest on the assessment paid by him for the defendant in the previous years at 12½ per cent per annum, the customary rate of interest prevailing in this district (vide *Exhibit D*). I find that the plaintiff is entitled to charge interest.

8. *Fourth issue.*—The plaintiff claims a charge on the defendant's *muli* right in the plaint mentioned properties for the amount of assessment paid by him on behalf of the defendant. The parties have fought mainly on this issue. The defendant contends that the plaintiff cannot claim a charge on the *muli* right in the suit properties and relies upon section 35 of the Madras *Revenue* Recovery Act. Section 35 simply enacts that the assessment paid by the tenant for his landlord can be deducted by the former from the rent payable by him. It does not create a charge on the landlord's interest in the property. But it is seen from I.L.R., 11 Mad., 452, at page 459 that the section 35 of *Revenue* Recovery Act is not exhaustive. The plaintiff's vakil relies on I.L.R., 26 Mad., 686, to show that the tenant can claim a charge on the landlord's interest for the assessment paid by him and refers me to the observations at page 711 wherein it is stated "that any person who had such an interest in the land as entitled him to pay the revenue due to Government and did actually pay it was entitled to a charge on the land, as against all the persons interested therein for the amount of the money so paid". I am sure that these observations cover the case of a *mulgeni* tenant who paid the assessment for and on behalf of his landlord. I hold that the plaintiff is entitled to a charge on the defendant's *muli* right in the suit property. In the view I have taken of the plaintiff's right to claim a charge it follows that the suit is maintainable on the regular side. (IV issue).

9. *Fifth issue.*—In the result the plaintiff is entitled to a decree for the plaint amount and costs with interest on the former from the date of plaint and on the latter from this date till payment at 6 per cent per annum against the defendant personally and by sale of his *muli* right in the plaint mentioned properties. The defendant is given one month's time for payment. He is ordered to bear his own costs.

Pronounced in open court, this 26th day of June 1919.

P. Narayana Menon,
District Munsif.

The following documents were filed:—

For Plaintiff.

A	11th March 1916	... ...	*Tirwa* receipt obtained by Manikka Minezes Bai.
A-1	14th April 1916	... ...	Do. do.
A-2	13th March 2nd April 1917	... ...	Do. do.
A-3	13th March 1918	... ...	Do. do.
B	4th April 1917	... ...	Receipt for rent of 1916 and 1917 passed by plaintiff to Manikka Minezes Bai.
B-1	10th April 1918	... ...	Receipt for rent for 1918.
C	26th September 1915	...	Certified copy of the written statement filed by the defendant in S.C. suit No. 326 of 1915 on the file of this Court.
D	31st March 1917	... ...	Certified copy of the judgment in S.C. suit No. 326 of 1915 on the file of this Court.
E	18th June 1917	... ...	Registered notice sent by plaintiff's pleader to the defendant.

The following exhibit was filed for defendant.

28th June 1917 ... ... Draft of the registered notice sent by defendant's pleader to plaintiff's pleader.

The following witness was examined.

For Plaintiff.

Manikka Minezes Bai.

P. NARAYANA MENON,
District Munsif.

(2)

IN THE COURT OF THE DISTRICT MUNSIF OF KARKAL.

Present:

M.R.Ry. T. BHUJANGA RAO Garu, M.A., B.L.,

SATURDAY THE EIGHTH DAY OF MARCH ONE THOUSAND NINE HUNDRED AND NINETEEN.

Original Suit No. 578 of 1918.

Between

Kavu Hengsu ... ... *Plaintiff.*

and

1. Akkamma Heggadthi ... ...
2. Mariakka Heggadthi ... ...
3. Akku Heggadthi ... ... } *Defendants.*
4. Madhava Prabhu ... ...

This suit coming on for final hearing on Tuesday, the 4th day of March 1919, in the presence of Mr. E. Vasudevaya, vakil for the plaintiff, of Messrs. K. Venkatesha Pai and K. Laxumana Pai, vakils for the 1st defendant, of Mr. K. Santhaya Kamath, vakil for defendants 2 and 3, and of Mr. K. Laxumana Kudva, vakil for the 4th defendant, and having stood over to this day for consideration the Court delivered the following:

JUDGMENT.

Suit to recover from defendants 1 to 3 personally or from such of the defendants as the Court might hold liable and also on the responsibility of their respective rights in the plaint mentioned property and also from the family assets of defendants 2 and 3, Rs. 227-7-9 being the amount of *tirwa*, including interest which the plaintiff paid in the years 1916 to 1918.

2. The plaintiff's case is as follows:—Fourth defendant's grandfather Laxuminarayana Prabu obtained a sub-*mulgeni* of the plaint mentioned property in the year 1852 from the original mulgeni tenant one Mahalinga Shetty. The plaintiff's ancestor Doomanna Shetty obtained the same on *vala-mulgeni* from the said Laxumana Prabhu. The muli right over the said property had been purchased from the mulgars Raya Kamthi and others in the year 1896 by the late Appu Heggde, husband of the 1st defendant, when he was the *ejaman* in the family of defendants 2 and 3. The plaintiff understands that though the patta of the said property was granted by the revenue authorities in the name of one Koti Pujari, he did not assert any sort of right in the property and relinquished the patta, that the 1st defendant got the said patta entered in her name, and that as the 1st defendant's husband Appu Heggde died without creating any sort of right in the 1st defendant in writing, the muli right over the said property still rests in the family of defendants 2 and 3. Chinnaya Naika who was the *ejaman* in the plaintiff's branch of the family executed in favour of plaintiff a registered *kulasapatra* on 7th April 1916. Under it the plaintiff acquired the right of management of the plaint vala-mulgeni property. As neither the pattadar nor the mulgars nor plaintiff's immediate landlord paid the Government assessment in the suit years, the same was collected from the plaintiff and her *chalgeni* tenants. In the suit filed by the 4th defendant for rent he did not give any deduction for the *tirwa* payments so made. When defendants 1 to 3 were often asked to pay plaintiff the amount so paid for *tirwa*, they did not do so. Hence this suit has been filed. As the 4th defendant has got an interest in the plaint mentioned property he has been also impleaded in the suit.

3. The 1st defendant states that she has no right of any sort in the plaint mentioned property nor is it in her enjoyment; that the 1st defendant is not liable to pay the *tirwa* of the said property; that the 1st defendant did not get entered in her name the *patta* of the plaint mentioned property and she is not aware that the *patta* stands in her name; that she did neither apply to the revenue authorities for change of *patta* in her name nor did she make any statement before the revenue authorities to that effect; that in any case the 1st defendant is not personally liable for plaintiff's claim; that she has no objection if a decree is passed on the responsibility of the plaint mentioned property; that the *kulasapatra* relied upon by the plaintiff

is not valid and the plaintiff is not entitled to sue on the strength of the said *kulasapatra*; that the plaintiff did not pay the *tirwa* in the suit years; that the plaintiff is not entitled to claim interest as there is no contract for the same, and the rate thereof claimed is also excessive; that the 1st defendant is not a necessary party to the suit; and that plaintiff's suit should be dismissed with costs.

4. The defendants 2 and 3 state that they are not necessary parties to this suit; that defendants 2 and 3 are not aware of the sale in the name of Appu Heggde; that the sale was not for the benefit of their family; that defendants 2 and 3 are not liable to pay the *tirwa* of the plaint mentioned property as the *patta* does not stand in their name; that the plaintiff is not entitled to claim interest as there is no contract for the same and the rate thereof claimed is also excessive; that defendants 2 and 3 are not personally liable for plaintiff's claim; that their family assets also are not liable; and that plaintiff's suit should be dismissed with costs.

5. The 4th defendant states that the plaintiff is not right in impleading him in this suit; that plaintiff's claim as against him is barred as res judicata by reason of the decision in O.S. No. 423 of 1917 on the file of this Court filed by him against the plaintiff for arrears of rent; that as the *patta* of the suit property stands in the name of the 1st defendant, the plaintiff is entitled to recover the suit amount on the charge of the 1st defendant's *muli* right in the plaint mentioned property; that in O.S. No. 251 of 1915 on the file of this Court filed by the 4th defendant against Chinnaya Naika, the plaintiff's predecessor-in-title, it was decided that Chinnaya Naika was not entitled to get credit for the *tirwa* paid by him; that the plaintiff who was fully aware of this fact is not entitled to sue the 4th defendant; and that plaintiff's suit as against him should be dismissed with costs.

6. The issues are—

I. Whether the patta in respect of the suit property stood in the suit years in the name of 1st defendant.
II. If so, whether 1st defendant is not personally liable.
III. Whether plaintiff is entitled to a charge on the plaint property.
IV. Whether defendants 2 and 3 have been rightly impleaded.
V. Whether 4th defendant has been rightly impleaded.
VI. Whether plaintiff is entitled to charge interest and if so, at what rate.
VII. Whether the claim against 4th defendant is barred as res judicata.
VIII. Whether the payments of assessment alleged by plaintiff are true.
IX. Whether they were voluntary payments and if so, the suit is not maintainable.
X. To what relief is plaintiff entitled.

7. *Issues* 1 *and* 2.—The ancestor of one Raya Kamthi was the original *mulgar*. Th ancestor gave a *mulgeni* to one Mahalinga Shetty who according to plaintiff gave a sub-mulge to 4th defendant's grandfather Laxuminarayana Prabhu who in his turn gave a *vala mulgeni* plaintiff's ancestor Doomanna Naika. This is plaintiff's account. If so, plaintiff would be t holder of an under-lease under a *sub-mulgeni* tenant. In a former suit 4th defendant said th Mahalinga Shetty sold his right to Laxuminarayana Prabhu in 1852. If so plaintiff would himself a *sub-mulgeni* tenant.

8. Raya Kamthi and his brother sold their *muli* right in the year 1896 to o Appu Heggde, deceased husband of 1st defendant, and brother of defendants 2 and 3. In t sale-deed (*Exhibit L*) Appu Heggde is asked to collect the rents from the sons of Laxur narayana Prabhu, as if they were mulgeni tenants and not sub-mulgeni tenants. Hence version in the plaint as Mahalinga Shetty having granted a *mulgeni* to Laxuminarayana Pra is not likely to be correct.

9. Be this as it may, the history about the *patta* of the suit property is curious. At settlement the *patta* should have been issued in the name of Appu Heggde who had purchas the *muli* right in 1896. But somehow it was issued in the name of one Koti Puja Appu Heggde was himself the potail; and as the *tirwa* had been enhanced he seems to hav somehow managed to get the *patta* issued in the name of Koti Pujari. Appu Heggde died fiv years ago. The *patta* continued in the name of Koti Pujari till December 1916, though some suits had been filed against Koti Pujari in which he said he had nothing to do with the land. In July 1916, the 4th defendant seems to have made a statement (Exhibit I) to the Karkal Division Revenue Inspector; and apparently on its strength the *patta* was changed in the name of Appu Heggde's widow, the 1st defendant, though defendants 2 and 3 are members of his family —see Exhibit II. In Exhibit I the 4th defendant said that Appu had sold his *muli* right to the 1st defendant. But no sale-deed is produced nor any copy of the statement made by 1st defendant asking that the *patta* should be in her name. First defendant's son (D.W. 1) says that she was not examined before the *patta* was changed in her name; that her husband did not sell to her the *muli* right in the suit property and that the transfer of *patta* was made without her knowledge or consent. First defendant has produced an endorsement (Exhibit III) which shows that there is nothing in the taluk office records to show that first defendant was examined before the *patta* was transferred to her name.

10. In the present suit defendants 2 and 3 do not say that the *muli* right in the suit property was conveyed by Appu Heggde to his wife, the first defendant. Hence first defendant's story that she is not the owner of the *muli* right and never wanted the *patta* must

be true. The potailship must now be in the family of defendants 2 and 3. Hence the potail must have managed to see the *patta* was transferred to first defendant's name. Defendants 2 and 4 are not apparently anxious as to in whose name the *patta* stands, because the potail collects the *tirwa* by threat of distraint from the plaintiff.

11. I hold on the first issue that in the first of the suit years (1915–16) the patta was not in first defendant's name and that in the other years it was. On issue 2 I hold that the *patta* was issued in her name without her knowledge or consent; that she did not accept it; that the *patta* being a mere bill issued by the revenue authorities the first defendant cannot be made personally liable without proof that she had accepted the *patta*; and that such proof being wanting in the present case she is not liable.

12. *Issue* 4.—Defendants 2 and 3 have admittedly an interest in the muli right over which a charge is claimed. They have been rightly impleaded.

13. *Issue* 5.—The 4th defendant being the holder of a mulgeni interest is a proper party, though not a necessary party. I hold he has been rightly impleaded.

14. *Issue* 6.—Plaintiff has claimed interest at 12½ per cent. Reimbursement in cases such as this is an equitable claim. Hence interest is usually allowed. But I allow interest only at 6¼ per cent.

15. *Issue* 7.—Fourth defendant is not the pattadar and cannot be made liable. But there can be no res judicata as in the suit filed by 4th defendant the plaintiff was not permitted the right of deducting the *tirwa* from the rent which is not the right claimed in this suit.

16. *Issues* 8 *and* 9.—The payments are proved by Exhibits H, J and K series which also show that every payment was made after threat of distraint. I hold the payments are true and were not voluntary.

17. *Issue* 3.—As I hold that the registered *pattadar*, the 1st defendant, is not personally liable, to refuse a charge to the plaintiff is to refuse justice to her.

18. In the case of co-owners and co-sharers compelled to pay the *tirwa* to preserve the entire property, a charge is allowed in Madras on the shares of the others—see XXVI Mad., page 686; XXXVI Mad., page 493.

19. In the case of a lessee who was compelled to pay the tirwa on land not included in his lease, he was given a charge on such land in VI Cal., page 549, which was quoted with approval in XXVI Mad., page 686.

20. In XXVI Mad., page 686, at page 711, Bashyam Ayyangar J., after referring to a dictum laid down by the Privy Council in XI M.I.A., page 241, made the following observation: "The principle indicated by the dictum is that any person, who had such an interest in the land as entitled him to pay the revenue due to Government and did actually pay it, was thereby entitled to a charge on the land, as against all persons interested therein, for the amount of the money so paid". The words "any person who had such an interest in the land as entitled him to pay the revenue due to Government" must certainly include a sub-mulgeni tenant or a vala-mulgeni tenant whose interest amounts to a substantial interest of a proprietorial nature. (In XXX Mad., page 35, no question of salvage lien arose.)

21. Considering the observations in XXVI Mad., page 686, at page 703, and the restricted nature of the charge conferred in analogous cases by section 35 of the Revenue Recovery Act (which according to XI Mad., page 452, at page 459, is not exhaustive), I can declare a charge only on the muli right owned by Appu Heggde.

22. *Issue* 10.—Plaintiff will recover Rs. 209 and proportional costs and subsequent interest at 6 per cent on Rs. 209 on the charge of the muli right in the properties covered by patta No. 94 owned by the family of defendants 2 and 3. Defendants will bear their own costs.

Pronounced in open Court, this 8th day of March 1919

T. Bhujanga Rao,
District Munsif.

Plaintiff's documents.

A	29th May 1858		Mulgeni chit executed by Laxuminarayana Prabhu to Doomanna Shetty.
B	5th October 1912	...	Certified copy of the decree in O.S. No. 160 of 1912 on the file of this Court.
C	14th August 1914	...	Certified copy of the judgment in O.S. No. 70 of 1914 on the file of this Court.
D	8th March 1915	...	Certified copy of the judgment in A.S. No. 425 of 1914 on the file of the District Court.
E	10th January 1916	...	Certified copy of the judgment in O.S. No. 251 of 1915 on the file of this Court.
F	7th April 1916	...	Registered kulasapatra executed by Chinnayya Naika and another to plaintiff and others.
G	12th September 1917	...	Certified copy of the judgment in O.S. No. 423 of 1917 on the file of this Court.

Plaintiffs documents.

H	16th March 1917 ...	Sale notice issued by the Tahsildar of Karkal.
J	17th March 1917 ...	Sale notice issued by the Head Accountant of the Karkal Taluk office.
K	12th March 1914 to 23rd May 1916.	Tirwa receipts passed by the Revenue officers.
K-1	14th March 1917 ...	Do. do.
K-2	30th March 1917 ...	Do. do.
K-3	16th April 1917 ...	Do. do.
K-4	13th May 1917 ...	Do. do.
K-5	23rd March 1918 ...	Do. do.
K-6	12th April to 12th May 1918.	Do. do.
L	25th February 1896 ...	Registration copy of the sale deed executed to Raja Kamthi and another to Appu Hegade.
M	Fasli 1324	Certified copy of patta No. 94 of Kukkundur.

Defendant's documents.

I	12th April 1916 ...	Certified copy of the statement recorded by the Revenue Inspector of Karkal division.
II	6th December 1916 ...	Certified copy of the order passed by the Deputy Tahsildar of Karkal in K.R. No. 54 of 1326.
III	7th January 1919 ...	Endorsement order given by the Tahsildar of Karkal to the first defendant.

Defendants' witness.

Sheenappa Hegade.

T. Bhujanga Rao,
District Munsif.

(3)

IN THE COURT OF THE DISTRICT MUNSIF OF UDIPI.

Wednesday the Twenty-third day of July One thousand nine hundred and nineteen.

Present:

M.R.Ry. M. Manjunatha Rao Avargal, B.A., B.L

Original Suit No. 84 of 1919.

Between.

1. M. Krishna Bhatta ... ... } *Plaintiffs.*
2. P. Krishnaveni Amma ... ... }

and

Guru Rao ... ... *Defendant.*

This suit coming on for final hearing on Tuesday, the 22nd day of July 1919, in the presence of Mr. B. Bhujanga Rao for plaintiff, and of Mr. K. Ramanatha Pai for defendant and having stood over to this day for consideration, the court delivered the following :—

Judgment.

Plaintiffs sue to recover from defendant personally and on the charge of defendant's interest in the plaint property Rs. 70-7-0, being the portion of assessment payable by defendant in respect of the plaint property for the years 1915 to 1918 at Rs. 15-8-0 per annum with interest thereon at 6¼ per cent.

2. It is alleged in the plaint as follows: Plaint property is a portion of a property belonging to the *muli* right of defendant's family and the *muli* right appertained to the several rights of eleven branches of defendant's family. The *mulgeni* right in the plaint and other properties had been purchased from the then tenants by one Srinivasa Rao, one of the *mulidars* who thereafter sold all his *muli* and *mulgeni* rights to Gururayacharya, the late husband of second plaintiff. A portion of the plaint property was sold by second plaintiff to first plaintiff and now the whole plaint property is in the enjoyment of plaintiffs as *mulgeni* tenants and fractional landlords. Defendant has purchased the *muli* right of six branches and is now entitled to get an annual profit of 78¾ seers of *beltige* rice and Rs. 3-2-0 in cash. The total profits secured to all the *mulidars* is three *kaide muras* of *tholsalu* rice and Rs. 4-0-1 in cash and two vegetable loads. The portion payable to the other *mulidars* is 47¼ seers of rice and Re. 1-6-1 in cash. At the time of the *mulgeni* lease of the plaint property the assessment of the holding was Rs. 24-9-2. Now the assessment of plaint property alone, even excluding punja recently assessed, is Rs. 46-6-0 and cess thereon is Rs. 4-5-0. Hence the assessment payable by the *mulidars* is Rs. 48-8-2. Hence the increased assessment of the plaint property is Rs. 23-15-0.

The whole assessment of the plaint property has been paid by plaintiffs in the plaint years 1915 to 1918. Hence defendant is liable to contribute rateably to his interest in the *muli* right the increased assessment of the plaint property. According to defendant's interest, he is liable to contribute $\frac{1}{2}\frac{3}{8}$ share of the increased assessment. Hence defendant is liable to contribute Rs. 15-8-0 a year. As the plaintiffs have paid the assessment for the benefit of defendant also, and as defendant has even recovered a decree in S.C.S. No. 965 of 1918 for his share of *mulgeni* rent without giving credit for the plaint charge plaintiffs are entitled to recover from defendant his share of the enhanced assessment personally and on the charge of his interest in the plaint property, with interest at 6¼ per cent from the due dates.

3. Defendant contends that, agreeably to the terms of the *mulgenichit* the *mulgeni* tenant is not entitled to recover anything from defendant in respect of the assessment paid by the tenant that plaintiffs have further been the *pattadars* of the plaint property, that plaintiffs are not, in consequence entitled to any contribution, that plaintiffs are likewise estopped from claiming any contribution from the defendant, that even otherwise the tenant is liable to bear the enhanced assessment which is due to the improvements worked on the land by him, and that plaintiffs are not entitled to claim any interest.

4. The issues are—

I. Is plaintiff entitled to any and what contribution from the defendant in respect of the assessment alleged to have been paid by him?

II. Is plaintiff estopped from claiming any contribution from the defendant.

III. What interest, if any, is plaintiff entitled to?

IV. What relief is plaintiff entitled to?

5. *Issues I and II.*—The defendant is the *muligar* of the suit property. The plaintiffs purchased the *mulgeni* interest of the whole property of which the suit property forms a part and the *muli* right of some of the co-sharers of the defendant. The plaintiffs sue for contribution for the defendant's share of the enhanced assessment paid by them. The defendant had sued the plaintiffs for his *mulgeni* rent in S.C.S. No. 965 of 1918. The plaintiffs claimed to set off the enhanced assessment paid by them towards the rent. The plaintiffs' claim was disallowed (vide exhibit XII). The plaintiffs now seek to recover the enhanced assessment paid for the defendant's share. The plaintiffs' predecessor is the registered *pattadar*. As such the plaintiffs are liable to pay the assessment to Government. Therefore the plaintiffs are not entitled to recover the same from the defendant. The plaintiffs in their sale-deeds *exhibits I* and *II* undertook to pay the assessment. Under exhibit B the original *mulgeni* tenant himself had undertaken to pay the assessment and pay the balance of profits as rent to the *mulgar*. The plaintiffs' pleader contends that though under the law the *pattadar* is liable to pay the assessment the *mulgeni* tenant is liable to pay only the assessment as it then existed at the time of the *mulgeni* and he relies upon *Narayana Ramachandra* v *Manager Nagappa* 8, Indian cases 411. That case turned upon the construction of the *kabuliyat* there and the *muligar* had undertaken to pay the assessment in that case. In this case the plaintiffs who are the mulgeni tenants have undertaken to pay the assessment and pay the net profits as rent to the *mulgar* and are themselves the *pattadars*. In either view of the case, the plaintiffs themselves are liable to pay the assessment. Even from an equitable point of view, the plaintiffs only are liable to pay the enhanced assessment because the rent payable to the landlord is less than the enhanced assessment. Therefore the plaintiffs have no case either in law or in equity. I find these issues against the plaintiffs.

6. *Issue III.*—The plaintiffs are entitled to claim interest on the amount paid by them as assessment in a suit for contribution, 33 M.L.J. short notes, page 13.

7. *Issue IV.*—In the result, the plaintiffs' suit stands dismissed with costs.

Pronounced in open court, this 23rd day of July 1919.

M. Manjunatha Rao,
District Munsif.

Plaintiffs' exhibits.

A. 31st May 1904. Settlement patta No. 102 of Badagabettu village granted to Gururayacharya, husband of second plaintiff.

B. 2nd Palganna Babul of Shidlesthi (9th March 1860). Kayangeni Edumudi executed by Ummaya Shethi and his elder sister Uvamma in favour of Thammava and eleven others.

Defendant's exhibits.

I. 30th July 1897. Registration copy of sale-deed executed by Srinivasaraya and his two sons in favour of Gururayacharya

II 28th September 1914. Registered deed of sale executed by second plaintiff in favour of first plaintiff.

III. 14th August 1916. Registered deed of sale executed by Puttraya in favour of first plaintiff.

IV. 7th March 1911. Registered will left by Gururayacharya.

V. 16th August 1918. Kayangeni receipt passed by Nagappaya to first plaintiff.

Defendents exhibits—cont.

VI. 18th April 1916. Money order receipt of Nagappaya for Rs. 5-8-0 remitted by first plaintiff.

VII. 20th October 1917. Money order receipt of Nagappaya for Rs. 2-9-0 remitted by first plaintiff.

VII. 27th October 1909. Letter addressed by Gururayacharya to defendant.

IX. 10th August 1911. Letter addressed by Ramakrishnacharya to defendant.

X. 2nd August 1913. Post registered card addressed by second plaintiff and her son to defendant.

XI. Money order coupon for Rs. 15-5-0 remitted by Hariappa Shanbhaga for Gururaya Acharya.

XII. 19th December 1918. Certified copy of judgment in S.C.S. No. 965, on the file of this court.

M. Manjunatha Rao,
District Munsif.

Plaintiffs' witness.

Mardithaya Krishna Bhatta (first plaintiff).

Defendant's witnesses.

Nil.

(4)

Letter—from the Secretary, Bar Association, Karkal.
To—the District Munsif, Karkal.
Dated—the 10th October 1919.

In compliance with your notice on Reference No. 820-B/19-1, I am directed by the Bar Association, Karkal, to offer the following remarks.

2. We are requested to cite typical concrete cases of hardship during the last year as a consequence of the enhancement of tirwa on mulgeni holdings and the want of any legislative enactment fixing the incidence of the enhanced assessment between the mulgars and the mulgeni tenants.

3. The reference recites that it has been suggested that the number of cases of hardship are not many. The members of this association are unanimously of opinion that the suggestion is unfounded and cannot be supported by facts. Legislation for setting the matter right has been anxiously expected ever since the decision of the Madras High Court in *Vidyapurna Thirthaswami* v. *Uggannu*. This expectation has been continually nursed by successive Collectors of the district representing that a Bill with the object was under consideration of the Government and would be passed into law as soon as convenient. The replies of the Government to local memorials and interpellations from local representatives also held out this hope. In these circumstances the members of the Bar in the pleadings before the courts had to proceed in cases which came before the courts on the basis of the High Court decision and did not attempt to bring the incidence of assessment in issue. In a much larger number of cases, the members of the Bar advised the parties to postpone suits for rent till the expected Bill was passed.

The pleadings in the courts therefore generally show that the total amount of tirwa was altogether borne by the mulgar or was given credit to the tenant by the mulgar often with a reservation that he should not be prejudiced by any change in the law subject to the reservation. Most of the tenants have not yet filed suits against mulgars partly because they are advised as stated above and partly as such a course was patently iniquitous. Some tenants however have had the hardihood to file suits and obtain decrees for tirwa paid against the mulgar though the mulgars have not collected a single pie of rent. A few of such cases have been cited below as typical instances.

The Association feels it necessary to remove a possible misapprehension regarding the extent of occupied land held under mulgeni tenure in the district. The revenue registry or adangals prepared at Settlement show only a small fraction of the number of mulgenis. There are very many mulgenis which are not entered in the Settlement register which have come to the notice of the court and the practitioners as admitted mulgenis. The Association believes that this is due to the ignorance of the tenants and the fact that the last survey and settlement were the first in the district and the people did not realise the scope and the object of these operations.

The members of the Association can of their own knowledge cite hundreds of cases in which the mulgar receives no rent whatsoever and the tenant enjoys the holding on payment of tirwa also.

Several members of the Bar are mulgeni tenants who are in enjoyment of their mulgeni properties without payment of any rent under the protection of the High Court decision. The Karkal Dhansale Mutt of the Jain community with its patta in the name of Kusuranddamma and owning properties paying a tirwa of Rs. 800 has been totally deprived of its income by the enhancement of assessment. Not only has the endowment not recovered any rents but it has further been threatened with a number of suits by its mulgeni tenants who have paid tirwa in excess of the amount of rent payable by them. There are many more such cases where the settlement assessment exceeds the amount of rent. In certain cases the assessment is double or treble the amount of rent due.

For the reasons stated above, many specific cases of suits filed by tenants against mulgars from the beginning of the present calendar year cannot be given. Some of them are still pending. The number of suits is not a correct index of the extent of hardships and difficulties arising between mulgars and mulgenidars as typical instances of such difficulties, the Association refers to the following cases.—

The Association believes that it will also be useful to inquire into the number of cases in which the mulgar out of sheer despair has been compelled to surrender the patta. The Association begs also to refer to a number of cases in which the mulgar unwilling to surrender his interest has attempted to get round the tenant and charge on him a portion of the enhanced burden in various ways for example by withholding receipts for rents received, by setting up frivolous claims against the tenant or by stirring up vexatious civil and criminal litigation.

List of suits.

1. O.S. No. 41 of 1917.	Tukra Shetti, plaintiff *v.* Kundar Subraya, defendant.	
2. S.C. No. 424 of 1919.	Do.	
3. O.S. No. 123 of 1919.	J. C. Aranna *v.* K. M. L. Aranna.	
4. O.S. No. 535 of 1918.	Salappa Mudartha *v.* Krishna Pai.	
5. O.S. No. 578 of 1918.	Kavu Shedthi Akkamma Heggadthi.	
6. O.S. No. 442 of 1919.	Anthony Mothi *v.* Babu Shetti.	
7. S.C. No. 404 of 1919.	Gummanna Hegade *v.* Deva Pai.	
8. O.S. No. 168 of 1919.	A. J. Nazareth, plaintiff *v.* Muhammad Isaac Saheb, defendant.	
9. O.S. No. 292 of 1919.	Ramanna Hegde *v.* Achu Hegde.	Indirectly in issue.
10. S.C.S. No. 127 of 1918.	A. Subba Rao *v.* Srinivasa Naika.	
11. O.S. No. 484 of 1918.	Chandpira Sahib *v.* Ramanna Hegde.	
12. O.S. No. 220 of 1919.	Sanur Krishna Bhatta *v.* Ramanna Hegde.	
13. O.S. No. 255 of 1919	Ramakrishna Bhatta *v.* Mariakke Heggadthi.	

14. A list of cases will be filed subsequently.

K. L. Kudva,
Pleader.

(5)

Statement showing instances of concrete cases filed in the District Munsif's Court of Coondapoor in which difficulties have arisen between mulgars and mulgenidars as regards payment of assessment to Government.

Number of the suit.	Plaintiff.	Defendants.	Description of mulgeni holdings.					Nature of the suit.	How disposed of.
			Village.	Patta number.	Settlement assessment.	Revenue assessment, if known.	Mulgeni rent due to the mulgars.		
Original suit No. 322 of 1919.	Subraya Upadya (mulgar and pattadar).	Original suit No. 267 of 1918. Subrayacharya (sub-mulgeni lessee).	Original suit No. 246 of 1915. Nagi and others (mulgenidars).	Original suit No. 32 of 1917. Venkatachala Gota (mulgeni lessee).	Original suit No. 157 of 1914. Maligai Nagappaya (sub-lessee).	Original suit No. 135 of 1907. Subraya Adiga, assignee of defendants 1 and 2 (intermediate mulgeni lessees in the aforesaid suit).	Venkataramana Aithala (pattadar and mulgar).	Assessment having been enhanced at settlement the pattadar and mulgar ceased to pay settlement assessment and as it was collected by the Government from the sub-lessee, the latter ceased to pay the rent due from him. Hence the pattadar brought a suit for a declaration that the lessees and sub-lessee should be made liable to pay the enhanced portion of the assessment.	The suit was dismissed by this court as well as by the First and Second Appellate Courts, the finding being that in the absence of a contract to the contrary the pattadar alone was liable to pay the enhanced assessment and the mulgeni tenants were not found to bear any portion of the same.
	Krishna Upadya (Artha-mulgeni lessee).	Beligai Subba Rao and others (mulgars and pattadars).	Krishnamma Shetathi and thirteen others (mulgars and pattadars).	Virabhadra Varuna and five others (joint pattadars and mulgars).	1. Venkataramana Aitala (the pattadar and mulgar and plaintiff in O.S. No. 135 of 1907). 2. Subraya Adiga (plaintiff in O.S. No. 157 of 1914).	Maligai Nagappaya—3rd defendant in the aforesaid suit (sub-mulgeni lessee).	1. Nagappa, (mulgeni lessees), 2. Subraya Nagappaya (mulgeni sub-lessee). 3. Maligo	The plaintiff as the assignee of the original mulgeni lessees sued his under-lessee to recover Rs. 712-3-0 on account of the arrears of rent with interest due for five years from the sub-lessee without giving credit to the payments of assessment made by the latter during those years.	The suit was decreed against the sub-lessee after holding that the pattadar was liable to pay the whole assessment and the puisne lessee was not bound to give credit to the payment of assessment made by the sub-lessee and that the latter's remedy was to claim payments of assessment made by him from the pattadar. This decree was confirmed in appeal.
	Village Balkur.	Kulanji village.	Taggarshe.	Koteshwar.	Do.	Koteshwar.		The plaintiff, the sub-lessee sued to recover from the pattadar and the intermediate lessee Rs. 631-1-8 principal and interest on account of the payments of assessment made by him at Rs. 66-3-10 a year as from 1907 to 1912 claiming also a charge for the amount on the right title and interest of the pattadar and the intermediate lessee.	This suit was decreed in favour of the plaintiff for the amount allowed and this decree was confirmed in second appeal.
	..	9	125, 177, 163, 123, 167 173, 183 and 184.	76	Do.	169		This was a suit brought by the mulgenidar against the pattadars for the recovery of Rs 307-12-1 inclusive of interest in respect of the aggregate sum of Rs. 268-9-11 being the assessment paid by him for the holding from 1905 to 1916 (after giving credit to only three years' mulgeni rent due from him) as the pattadars failed to pay the assessment as the same exceeded the rent reserved.	The suit was decreed against the pattadars but the rent due by the lessee for all the years was given credit to in the amount claimed.
	Rs. A. P. 9 7 0	Rs. A. P. 166 12 0	Rs. A. P. 74 14 5	Rs. A. P. 23 14 0	Do.	Do.	Rs. A. P. 66 3 10	This was a suit by the mulgenidars against the mulgars and the pattadars for refund of assessment paid by them from 1904 to 1914, viz., Rs. 258-5-10 plus Rs. 183-10-6 interest on the same from the respective dates of payment as the pattadars failed to pay the assessment.	The suit was decreed against the pattadars in favour of the mulgenidars for the amount allowed.
	Rs. 15 0				Do.	Do.	19 5 8	This suit is similar to the above. The sub-mulgeni lessee brought this suit against the pattadars and mulgars for the recovery of assessment with interest that is Rs. 190 paid by him as they ceased to pay the assessment.	The suit was decreed against the mulgars and the pattadars for the amount allowed.
	4¾ manigas and 3½ seers of rice.	Rs. 60-0-0.	24 manigas of rice and Rs. 8.	Rs. 20 plus half the cess annas 15.	Do.	Do.	15 manigas of rice and Rs. 2 rent due from 3rd defendant 9 defendants 1 and 2 was 18 manigas of rice and Rs. 10.	Plaintiff sued for a declaration that defendant was liable to pay plaintiff annually a net rent of 4¾ manigas and 3½ seers of rice after payment of the settlement assessment by the defendant himself. Defendant pleaded that the enhanced portion namely Rs. 2-8-0 should be deducted from the rent due by hi	This court, after construing the document to cast the liability upon the defendant, decreed in favour of plaintiff.

K. Balaji Rao,
District Munsif.

(6)

Name of village.	Patta number.	Name of pattadar and the mulgenidar.	Settlement assessment.	Revenue assessment.	Mulgeni rent according to the mulgeni lease.
			RS. A. P.	RS. A. P.	RS. A. P.
Haladi of Kundapur taluk.	14	Mahabaleshwara Adiga, Mulgeni Puttanna Bhatta.	9 11 0	5 9 9	8 8 0
Mada Makki taluk.	31	Mahabaleshwara Agiga, Mulgeni Dasa Bhatta.	91 12 0	30 0 0	65 5 6
Do.	14	Mahabaleshwara Adiga, Mulgeni Srinivasa Bhatta.	75 10 0	20 0 0	49 15 0
Belve of Kundapur taluk.	14	Mahabaleshwara Adiga, Mulgeni Nagappa Tolara.	67 15 0	29 0 0	36 0 0
Kundapur kasba ..	232	Mahabaleshwara Adiga, Mulgeni Abdul Saiba.	6 1 0	1 8 0	3 0 0
Pandeshwar of Udipi taluk.	94	Mahabaleshwara Adiga, Mulgeni Krishna Holla.	24 14 0	1 8 0	6 0 0
Kachur of Udipi taluk.	Not known	Venkatachalaya, Mulgeni Jagannatha Mallya.	9 10 0	1 0 0	5 0 0
Kakkunje of Udipi taluk.	16	Nandiappa Shetti, Mulgeni Ramappa Adiga.	2 6 0	..	0 3 0
Kotathattu of Udipi taluk.	146	Puniappa Karantha, Mulgeni Ananthaya Upadya.	1 6 0	0 1 0	0 8 0
Shirur of Udipi taluk.	13	Sode Matt, Mulgeni Kaveri Seedthi.	146 8 0	56 4 0	96 11 6 and 6 muras of raw rice.
Thenka of Udipi taluk.	168	Sode Matt, Mulgeni Chandamiya Sahib.	1 5 0	..	0 4 0
Innanje of Udipi taluk.	77	Sode Matt, Mulgeni Muthakke.	51 3 0	..	20 11 0 and 2½ muras and 7 seers of raw rice.
Herur of Udipi taluk.	20	Sode Matt, Mulgeni Vishnumurthi Upadya.	0 9 0	..	0 8 0
Mallar of Udipi taluk.	146	Sode Matt, Mulgeni Vaikunta Shanbogue.	27 7 0	20 9 0	24 0 0
Shenapur of Kundapur taluk.	50	Madappaya, Mulgeni Annappa Shetty.	37 9 0	38 8 5	54 0 0
Uppunda of Kundapur taluk.	380	Durga Parameshwari, Mulgeni Madappaya.	14 9 0	..	1 8 0
Kundbarandadi of Kundapur taluk.	4	Nagappa Bhandari, Mulgeni Madappaya.	1 2 0	..	0 12 0
Do. do.	70	Puttaya Upadya, Mulgeni Chinnappa.	4 15 0	..	4 0 0
Do. do.	73	Puttaya Upadya, Mulgeni Nagappa Bhandari.	2 8 0	..	1 4 0
Kundapur kasba.	537	P. Venkataramanaya and Vasudeva Holla, Mulgeni Laxmi and Subraya.	*3 3 1	..	2 1 9
Do.	820	P. Venkataramanaya and Vasudeva Holla.	*2 0 2	..	0 11 3
Do.	544	P. Venkataramanaya and Shankar Rao, Mulgeni Subraya.	*11 10 5	..	5 5 7
Do.	670	P. Venkatramanaya and three others, Mulgeni Annappa.	*11 14 10	..	4 11 7
Do.	171	P. Venkataramanaya, Mulgeni Annappa.	*0 12 2	..	0 8 6
Angali of Kundapur taluk.	189	Mahabaleshwar Adiga, Mulgeni Sylvestar Fartado.	8 4 0	2 0 0	18 0 0
Do. do.	236	Mahabaleshwara Adgiga, Mulgeni Veera.	10 10 0	3 0 0	27 0 0
Do. do.	199	Mahabaleshwara Adiga, Mulgeni Anna Bai.	33 13 0	4 0 0	49 9 6
Shiva of Udipi taluk.	12	Sode Matt, Mulgeni Bastad and three others.	22 1 0	8 4 0	8 0 0 and [illegible] muras of raw rice and 4 head loads of vegetables and labour of 8 coolies.
Do. do.	14	Sode Matt, Mulgeni Manjee.	51 13 0	22 0 0	11 10 0 and 3½ muras and 2½ seers of raw and 18½ muras of boiled rice.
Do. do.	15	Sode Matt, Mulgeni Venkataramana Bhatta.	17 8 0	6 10 7	82 7 6 and 9½ muras and 2 seers of boiled and 13 muras and 7½ seers of raw rice and ½ mura of black gram.
Do. do.	16	Sode Matt, Mulgeni Bhagirathiamma.	13 1 0	4 14 0	
Do. do.	17	Sode Matt, Mulgeni Ramakrishna Bhatta and Narayana Bhatta.	33 0 0	11 14 1	
Do. do.	23	Sode Matt, Mulgeni Ananthaya Shanbogue.	63 5 0	13 6 0	
Do. do.	18	Sode Matt, Mulgeni Jogappa Hegode.	133 9 0	45 6 0	100 muras of boiled rice.
Do. do.	28	Sode Matt, Mulgeni Sitarama Hebbara.	11 14 0	4 8 0	20 and 24 muras of boiled rice, 6 head loads of vegetables and 2 coolies.
Kattangere of Udipi taluk.	51	Sode Matt, Mulgeni Sitarama Hebbara.	19 2 0	8 6 10	
Padebettu of Udipi taluk.	56	Sode Matt, Mulgeni Anantha-charya.	0 11 0	0 6 0	Rupee one and 1¼ muras and 3½ seers of raw rice.
Do. do.	84	Sode Matt, Mulgeni Padmanabha Bhatta.	0 14 0	0 7 0	Rupee one and 1¼ muras and 3½ seers of raw rice.

Including cesses.

Name of village.	Patta number.	Name of pattadar and the mulgenidar.	Settlement assessment.	Revenue assessment.	Mulgeni rent according to the mulgeni lease.
			RS. A. P.	RS. A. P.	RS. A. P.
Badu of Udipi taluk.	18	Sode Matt, Mulgeni Angara Shetti.	0 7 0	0 5 0	1 0 0
Do.	17	Sode Matt, Mulgeni Kaly Shedthi.	36 0 0	..	42 4 0 not registered as mulgeni at settlement.
Do.	19	Sode Matt, Mulgeni Subba Shetti.	10 4 0	7 0 0	13 5 0
Do.	17	Sode Matt, Mulgeni Basavu Poojari.	74 7 0	..	82 6 0 not registered as mulgeni at settlement.
Paduru of Udipi taluk.	4	Sode Matt, Mulgeni Subbanna Tantri and two others.	0 11 0	0 4 5	63 4 8 and 12½ muras and 4½ seers of boiled rice.
Do.	33	Sode Matt, Mulgeni Kamalamma.	25 5 0	10 3 11	
Do.	34	Sode Matt, Mulgeni Gopalakrishna Tantri.	16 2 0	6 8 6	
Do.	74	Sode Matt, Mulgeni Krishna Tantri.	12 11 0	5 2 2	
Do.	76	Sode Matt, Mulgeni Srinivasa Tantri.	13 15 0	5 10 3	
Do.	81	Sode Matt, Mulgeni Subraya Tantri.	11 13 0	4 12 6	
Do.	86	Sode Matt, Mulgeni Subbanna Tantri.	12 11 0	5 2 2	
Mallar of Udipi taluk.	147	Sode Matt, Mulgeni Srinivasacharya and two others.	67 4 0	54 0 0	60 0 0 and 4 muras of boiled rice.
Do.	149	Sode Matt, Mulgeni Subbanna Bhatta.	18 8 0	13 10 0	37 8 0
Karkal of Udipi taluk.	27	Sode Matt, Mulgeni Narayana Bhatta.	4 3 0	0 15 5	14 2 0
Do.	28	Sode Matt, Mulgeni Narayana Upadya and Subraya Upadya.	48 4 0	10 13 7	10 14 0 and 3 muras and 2 seers of raw and 9½ muras and 3½ seers of boiled rice.
Udiawar of Udipi taluk.	74	Sode Matt, Mulgen. Gopalakrishnayya and Juoma Lobo.	2 0 0	1 12 0	4 2 0
Do.	78	Sode Matt, Mulgeni Mariappa Bhatta.	4 5 0	3 12 0	0 4 0 and 2½ muras of rice and 7 seers of boiled rice.
Do.	80	Sode Matt, Mulgeni George Cornelio Fernandes.	2 3 0	1 15 0	3 0 0
Do.	81	Sode Matt, Mulgeni Jaru Poojari.	28 11 0	18 5 0	32 4 0
Mattu of Udipi taluk.	18	Sode Matt, Mulgeni Ramachandra.	3 5 0	2 8 3	6 6 0 and seven tender coconuts.
Do.	198	Sode Matt, Mulgeni Ramakrishna.	4 15 0	3 12 0	,, 13 4 0
Do.	199	Sode Matt, Mulgeni Parvathi.	0 6 0	0 4 7	,, 8 0 0
Pangal of Udipi taluk.	104	Sode Matt, Mulgeni Nagappaya.	2 0 0	62 6 0	161 7 5 and ½ mura and 7 seers of raw rice.
Udiargoli of Udipi taluk.	200	Sode Matt, Mulgeni Bhandari Poora.	48 10 0		
Do.	204	Sode Matt, Mulgeni Nagappaya.	47 10 0		
Balnad, Uppenaigadi taluk.	40	Madakke Kunhi and Mammakke Mulgeni Subraya Naika.	64 3 0	..	60 0 0
Aryapu, Uppenaigadi taluk.	19	P. Suuaya, Mulgeni Billa Subbappa.	60 7 0	..	50 0 0
Ulamogar, Uppenaigadi taluk.	31	Muthakke Mulgeni Derji ..	37 5 0	..	32 0 0
Puttur, Uppenaigadi taluk.	94	Vishnu Rao, Mulgeni Ramappaya.	5 10 0	..	5 0 0
Do.	92	S. Ramakrishnaya, Mulgeni Janardhanaya.	19 15 0	..	10 0 0
Do.	199	Vishnu Rao, Mulgeni Poovani Hegadi.	1 1 0	..	0 3 0
Do.	65	Brahmaya Shetti, Mulgeni Marian Coelho	10 15 0	..	5 0 0
Do.	97	Brahmaya Shetti Mulgeni Venkataramanaya.	12 6 0	..	9 0 0
Do.	168	Brahmaya Shetti, Mulgeni Lores Vas.	1 4 0	..	1 0 0

V

Official Memorandum No. 820-B/19-6, Revenue, dated 23rd February 1920.

With his opinion No. 73, dated 12th March 1914, the Advocate-General furnished the Government with a draft Bill to provide for the enhancement of the rents payable under mulgeni leases in the district of South Kanara. The draft Bill, as revised by the Government, was approved by the Government of India who, however, suggested that the introduction of the Bill into the Legislative Council might be postponed until after the war, as the measure was likely to be contentious.

2. It is now proposed to introduce the Bill with certain alterations agreeably to the conclusions arrived at at an informal conference of officials and non-officials held at Mangalore on 18th October 1919. A copy of the proceedings of the conference is enclosed. The main alteration in the Bill is the division of the increase in assessment between the mulgar and the mulgenidar in the ratio of the old asesssment instead of on the basis of the benefits from the land.

3. 'A revised Bill, together with a revised Statement of Objects and Reasons, is transmitted to the Advocate-General for favour of remarks. His opinion is specially invited on the following points :—

(i) whether the words in italics in clauses 2 (*a*) and 5 of the Bill are unnecessary in view of the expression *or came into existence* which appears in clause 2 (*a*) and

(ii) whether the words underlined in sub-clauses (2) and (3) of clause 3 are necessary in order to make it clear that the terms ' mulgar ' and ' mulgenidar ' include not only the original parties to the lease but also the persons claiming under them.

E. S. Lloyd,
Acting Secretary to Government.

To the Advocate-General (through the Government Solicitor) with copies of a draft Bill, Statement of Objects and Reasons and Proceedings of the Conference, dated 18th October 1919.

Enclosures

[Not printed.]

VI

Letter—from H. Brightwell, Esq., Government Solicitor, Madras.
To—the Secretary to Government, Revenue Department.
Dated—the 28th April 1920.
No.—526.

Abstract.—Forwarding the following opinion of the Hon'ble the Advocate-General, No. 448, dated 27th April 1920 :—

Opinion.

[The Mulgeni Rent Enhancement Bill.]

Clause 2 as now worded would give relief only in cases where the mulgeni tenure is created by a grant in writing or an oral lease, express or implied. Where a mulgeni tenure is inferred by the court by long continuous payment of a fixed rent, the court infers that there was a grant in fact, proved not by direct evidence of the grant, but by proof of facts from which the existence of a grant is presumed. But there may be cases where there may be no valid or operative lease, yet a person may acquire a mulgeni right by adverse possession. For instance there may be cases where the tenant takes possession under an unregistered lease in writing, when the writing has to be registered; it may even be that the Transfer of Property Act applies to a particular case, in which case there can be no permanent lease without a writing registered. In these cases the person let into possession, may acquire a mulgeni right by 12 years' possession under a claim of right and the relation between the owner of land (the mulgar) and the person in possession would be precisely the same as if there was a valid mulgeni lease. Again there are cases where the properties of the mutts (there are a considerable number of such mutts in South Kanara) may be leased on mulgeni tenure by the head for the time being which may be void or voidable. In some of these cases at least where the mutt property is trust property, the person to whom such an invalid lease was given may acquire mulgeni rights by adverse possession. In cases where a mulgeni right has been acquired by adverse possession, the tenure is precisely the same as a mulgeni tenure acquired by a valid grant, and yet the former class of cases would not be governed by the Bill, and the mulgar would not be entitled to the benefit of the Act if passed. I do not know if this was intended; if not changes will have to be made in the proposed definition of mulgar and mulgenidar. In section 2 instead of the word ' lease ' the word ' tenure ' will have to be substituted and in clause (*a*) for ' granted ' the words ' created or acquired ' may have to be substituted.

Taking the clause as governing only 'leases,' it is unnecessary to have the words or executed or came into existence' and the words 'or which may hereafter such date.' As already observed by me the lease does not come into existence by a decision of a court, and if there is no actual lease [except in cases where the court holds that although there is no grant (i.e.) no lease, the person in possession has acquired the mulgeni right by adverse possession], the court cannot and does not presume the existence of a lease, contrary to fact. The court very often infers that there is a lease, especially when there is no written lease, but that inference is an inference of fact, and not a presumption of law as in the case of the 'lost grant theory' in English law. Anyhow if the wording is altered as suggested above, it will cover all the cases.

Cases where the question whether the relation between the parties to a suit is that of mulgar and mulgenidar comes up for decision present many forms but it is very rarely that any declaration is made; and in a vast majority of cases no declaration is made as to when the tenure was created. The words underlined are I think useless for the purposes of the Bill.

2. (*b*) I do not see the use of this clause. The principal provision of the Act is the settlement of an 'enhanced rent' by the Collector on application made by the mulgar and the enhanced rent comes into effect from the revenue year in which the application is made and prevails thereafter (sections 9 and 10). It has no retrospective effect.

If then there is no subsisting relationship of landlord and tenant before the date of the application to the Collector which application must be after the Act comes into force no such application can be made at all.

3. *Sub-clause* (*c*).—Why the later contract in writing with respect to the contingency of an enhanced assessment should be before the date fixed under sub-clause (*a*) is not clear. There must be consideration for the later contract and if the mulgar and the mulgenidar enter into a new binding contract in respect of the rent in view of the enhanced assessment there appears to be no need for them to go before the Collector to settle a fair rent. The mulgenidars are not like ryots in a zamindari who may require protection and in whose case the theory of freedom of contract does not apply. The mulgenidar can deal with the mulgar at arm's length and the restriction appears unnecessary. I think the last clause must be a separate sentence: in fact it may be separate clause (i.e.) *omit* 'but no order

4. *Clause* 3.—If my suggestion in the beginning of this note is accepted there may be a definition of 'mulgeni tenure' and the definitions of mulgar and mulgenidar may be recast and after the word 'heirs' the word 'representatives' may be added.

5. *Clause* 4.—The words 'by the Act' should be inserted between 'Collector' and 'upon'.

6. *Clause* 5.—I do not think there is any particular advantage in restricting the application to six months from the date fixed. The mulgar under sections 9 and 10 can get the enhanced rent only after the application. If he does not choose to apply before, he loses the enhanced rent. It would therefore be to his interest that he should come in as soon as he can. On the other hand by restricting the right to apply to six months, a great deal of hardship may be caused. The Collector can act only if the mulgeni tenure is established between the parties or admitted by them. In almost every case where there is no written instrument the parties are likely to dispute the existence of the permanent tenure. The Collector cannot dispose of that question; in fact the Act proceeds on the basis that before they go before the Collector, the relationship between the parties is established or settled. If such a question is raised before the Collector, he can do nothing. There is not even a provision for referring it to the court. Then there is the further question as to when the tenure was created or mulgeni right was acquired. The Bill appears to contemplate an inquiry into this question by the Collector (see section 6); but the time of creation as well as the existence of the tenure are so much mixed up that they will have to be settled by a civil court and may be so settled either before the application or after. Provision will have to be made for fresh applications after the decision by the civil court. The question of tenure may arise in a suit for ejectment, a claim to

sell the tenure, in a suit for rent, and in various other ways. The issue as to the tenure may be decided in one way by one court, in another by the appellate court and so on. Instead of restricting the time to six months and give power to the Collector to exempt in particular cases (the particular cases are likely to be numerous) I think it is better to allow the mulgar to apply when he desires which would ordinarily be after it had been established that there is a mulgeni tenure, unless the same is admitted. In this view except the first paragraph the rest may be omitted.

7. *Clause* 7.—What is meant by the old assessment and the new assessment may be made clear. The old assessment means the assessment fixed in 1819 and the new, the survey and settlement assessment of 1902.

Proviso.—'for believing' may be omitted. Instead of 'in accordance with general principles of equity', 'equitably' may be substituted; for, the words used would be understood as meaning in accordance with the principles of English Equity Jurisprudence. None of them or at least most of them would be inapplicable. The illustration 'as for instance assessed' may also be omitted. If necessary, rules may be framed as to the manner in which the Collector should exercise the power.

8. *Clauses* 8, 9 *and* 10 seem to be allright.

9. *Clause* 11.—The appellate forum may well be the District Court in all cases. The distribution of the applications to the Collectors by the District Collector need not be with reference to their value or complexity.

10. *Clause* 12.—I find some difficulty in the provision as to transfer of suits. This clause indicates that in spite of sections 9 and 10 the mulgar should not be compelled to repay the amount of enhanced revenue or such portion thereof as he should not be bound equitably to pay from the date fixed in the notification; but the last sentence declares that the revision of assessment will take effect from the date of the transfer which would I presume be very much later than the date fixed in the notification which will be sometime in 1902. Even in this country where the memories of the old Chancery Courts are sometimes revived in the duration of cases it would be hard to find a case pending for over 18 years (1902 to 1920); are execution proceedings also included? Has the Collector power to give a decree in accordance with his determination? Portions of the sum sued for may be legitimately payable by the mulgar. It must also be remembered that a pending suit must necessarily be for moneys due before its institution; and if the Collector's order is to take effect on the date of transfer, how can it affect the suit or the claim? I am afraid the Bill must be recast. If the Government will let me know their views in the light of the criticisms I have offered above, I shall be glad to redraft the Bill.

K. Srinivasa Ayyangar,
Advocate-General.

VII

Official Memorandum No. 820-B/19-9, Revenue, dated 19th May 1920.

With reference to his opinion No. 448, dated 27th April 1920, the Hon'ble the Advocate-General is requested to redraft the Mulgeni Rent Enhancement Bill in the light of the following remarks:—

(*a*) The Advocate-General's suggestions in regard to clauses 2 (*a*), 2 (*b*), 3 and 4, are accepted.

(*b*) The reason why clause 2 (*c*) does not save contracts entered into subsequent to the date fixed by Government under clause 2 (*a*) is that they were entered into at a time when the civil courts were generally inclined to the view that the enhancement should be borne by the mulgar. Such contracts would be one-sided having in all probability been entered into by the mulgar under the pressure of civil courts' decisions. The clause is intended for the protection of the mulgars' interests and Government consider that it should remain.

(*c*) As regards the Advocate-General's suggestion that sub-paragraph 2 of clause 5 be omitted, Government consider that, as the legislation is designed to deal with a special set of circumstances, there must be some finality. The object is that all cases requiring settlement should be brought to the notice of the Collector within a specified time, and such of them as involve no dispute as to the nature of the

tenure should at once be dealt with by the Collector. Where there is a bona fide dispute as to the tenure the Collector is expected to refer the parties to a civil court. No specific provision requiring such reference has been made in the Bill as being unnecessary in view of the fact that the Bill does not oust the jurisdiction of civil courts in such matters. Provision is made in clause 5 of the Bill for the admission of applications presented after the prescribed date owing to the question of tenure having been pending in civil courts. If the civil court decides the nature of the tenure and the date of the acquisition, the Collector will act upon the decision. If the court merely makes a declaration as to the nature of the tenure without determining the date of its acquisition the Collector will have to fix the date under clause 6 of the Bill. The Government are of opinion that sub-paragraph 2 of clause 5 should remain.

(*d*) The Advocate-General's suggestion that the words 'for believing' in the proviso to clause 7 be omitted does not commend itself to Government. His suggestions in respect of the clause are otherwise approved.

(*e*) The Government would let clause 11 stand as it is.

(*f*) The Advocate-General's criticism of clause 12 is not very clear. The date prescribed in the notification under clause 5 must be a date subsequent to the passing of the Act and cannot be sometime in 1902 as the Advocate-General thinks. As regards pending suits Government presume that the Advocate-General's difficulty is as to how claims relating to the period prior to the date of transfer are intended to be dealt with. From clause 10 of the Bill it will be seen that the Act is not to have retrospective effect and the Collector has therefore no power to decree claims for periods prior to the date of transfer of the suits to him. The suits must be by mulgenidars to recover from mulgars the enhanced assessments paid by them and as the principle of the Bill is that the major portion of the enhanced assessment should be borne by the mulgenidar, the hardship that the mulgenidar would suffer by his being deprived of his claim in regard to past payments is ignored. The clause is not intended to apply to execution proceedings. The Advocate-General is requested to revise the clause if necessary so as to make the intention clearer.

2. With reference to clause 8 of the Bill the Collector of South Kanara points out that there may be cases in which the assessment on the mulgeni holding has been apportioned among the fields comprising it by the parties themselves or by the Settlement Officer on a basis different to that laid down in clause 8. These could not be treated as cases in which the assessment on individual fields is known and the Collector might therefore be compelled to make a fresh apportionment under clause 8, thereby disturbing the arrangements already made. It is not the intention of Government that such cases should be reopened by the Collector and the Advocate-General is requested to make the necessary amendments in clause 8.

3. The Advocate-General is requested to treat this reference as very urgent as it is proposed to introduce the Bill at a very early date.

E. S. Lloyd,
Acting Secretary to Government.

To the Hon'ble the Advocate-General.

VIII

OPINION.

The following alterations seem sufficient to carry out the intention of the Government:—

Clause 2.—Substitute 'tenures' for 'leases' and omit the words 'fulfil the following conditions, namely'.

(*a*) Substitute 'created or acquired' for 'were granted or executed or came into existence' and 'Local Government' for 'Governor in Council' and the latter substitution should be carried out throughout the Bill; the words in italics preceded by 'or' should be omitted as being unnecessary. Clause (*a*) would then read thus—

"Were created or acquired prior to a date to be fixed in this behalf by the Local Government in respect of each taluk or other local area; and"

Delete clause (*b*) and reletter (*c*) as (*b*).

Clause 2 (*c*).—Omit 'but'. The words from 'no order' to 'such lease' should be a separate sentence.

Clause 3 (1) should read 'mulgeni tenure means a holding of land in perpetuity on a fixed rent whether in money or kind or both and includes tenures of the description known as 'kayamgeni,' 'nigdigeni' and 'sub-mulgeni,' but not 'walawarg'.

Clause 3 (2) should read 'mulgar means the owner of land held under mulgeni tenure, his heirs, representatives and assigns and includes a mulgenidar who has granted a mulgeni lease to a sub-mulgenidar or sub-tenant, his heirs, representatives and assigns.'

Clause 3 (3) should read 'mulgenidar means a tenant of land held under mulgeni tenure, his heirs, representatives and assigns and includes a mortgagee in possession from such tenant or from his heirs, representatives or assigns.'

Clause 4.—Insert 'by this Act' between 'Collector' and 'upon.'

Clause 7, *proviso*.—Omit the words from 'as for instance' to 'area assessed' and all the words after 'apportionment'; and for the word 'the' before 'apportionment' substitute the words 'a fair and equitable.'

Clause 8.—Add the following proviso at the end: "Provided that, where an apportionment of the old assessment on a holding has been made among the survey fields comprising it by agreement between mulgar and mulgenidar or by the Settlement Officer, such apportionment shall be accepted by the Collector even though it did not conform to the provisions of this section."

Clause 12.—By mistake I read section 5 in this clause as section 2 and my remarks were based on that. Under sections 9 and 10 the rent as fixed will take effect from *the revenue year* in which application is made till revised on account of variation in assessment. Under this clause the revised rent will take effect only from the date of the transfer. There can therefore be no decree in the suit and the suit in so far as it seeks recovery of any sum paid, will be dismissed, as such sums must have accrued due before the date of the suit. The suit in so far as this matter is concerned will, on transfer, be treated as an application by the mulgar and a fair rent fixed. After this, a suit can be instituted for any sum which the mulgenidar may have paid in excess after the date of the transfer. That would be the effect of the section, and as that is the intention of the Government, no change in the language is required. The words 'or proceedings' may be omitted.

K. Srinivasa Ayyangar,
Advocate-General.

Order—No. 1245, Revenue, dated 1st June 1920.

Miscellaneous.

The Mulgeni Rent Enhancement Bill, with the Statement of Objects and Reasons, is transferred to the Legislative Department for further action.

2. The following letter will be despatched to the Government of India.

(True extract)

E. S. Lloyd,
Acting Secretary to Government.

To the Legislative Department, with copies of Bill,
Statement of Objects and Reasons and letter to the Government of India.
,, Board of Revenue (Land Revenue), with copies of Bill and Statement of Objects and Reasons.

ANNEXURE

THE MULGENI RENT ENHANCEMENT BILL.

Preamble. WHEREAS it is expedient to amend the law relating to mulgeni leases in the district of South Kanara, in order to provide for the apportionment of the difference between the assessment at the settlement of 1902 and that at the settlement of 1819, it is hereby enacted as follows:—

Short title and local extent. 1. This Act may be called the Mulgeni Rent Enhancement Act and shall be applicable to the whole of the district of South Kanara.

Mulgeni leases to which the Act applies. 2. The provisions of this Act shall apply to such mulgeni tenures as

(*a*) were created or acquired prior to a date to be fixed in this behalf by the Local Government in respect of each taluk or other local area; and

(*b*) do not expressly provide in writing, whether in the original lease or in any other contract entered into before the date fixed by the Local Government under sub-clause (*a*), for the contingency of the enhancement by Government of the land revenue assessment leviable on the land forming the subject of the lease.

No order or decree of a civil court passed before this Act comes into force shall operate to prevent the application of the Act to any such lease.

Definitions. 3. In this Act, unless there is something repugnant in the subject or context,

Mulgeni tenure. (1) 'Mulgeni tenure' means a holding of land in perpetuity on a fixed rent, whether in money or kind or both, and includes tenures of the description known as 'kayamgeni', 'nigdigeni' and 'sub-mulgeni', but not 'walawarg'.

Mulgar. (2) 'Mulgar' means the owner of land held under mulgeni tenure, his heirs, representatives and assigns, and includes a mulgenidar who has granted a mulgeni lease to a sub-mulgenidar or sub-tenant, his heirs, representatives and assigns.

Mulgenidar. (3) 'Mulgenidar' means a tenant of land held under mulgeni tenure, his heirs, representatives and assigns, and includes a mortgagee in possession from such tenant or from his heirs, representatives or assigns.

Collector.

4. It shall be competent to the Local Government to confer all or any of the powers and to impose all or any of the duties conferred or imposed on the Collector by this Act upon any other officer or person by notification in the official gazette.

Application to enhancement.

5. Any mulgar may make an application in writing to the Collector to make an order for the enhancement of the rent payable under a mulgeni lease of land of which he is the mulgar.

Such application must be made within six months from the date fixed in this behalf by the Local Government by a notification published in the official gazette. It shall be in such form as the Local Government may prescribe and shall be accompanied by such fees as may be fixed by the Local Government.

Provided that the District Collector may, in cases in which the lease may hereafter be declared by a court to be a mulgeni lease subsisting from a time prior to the date mentioned in clause 2 (*a*) and in other cases for special reasons to be recorded in writing, entertain any application presented after the date notified as above. The District Collector may deal with the application himself or transfer it to the Collector for disposal.

Inquiry and determination of enhancement of rent.

6. On receiving an application under section 5, the Collector or District Collector, as the case may be, shall hold an inquiry, and, if he is satisfied that the mulgeni lease to which the application relates fulfils the conditions laid down in section 2, shall, in accordance with the provisions of the next following section, determine by an order in writing what enhancement, if any, shall, be made in the rent payable in respect of the mulgeni lease.

Principles on which enhancement is to be made.

7. (1) Where the rent is payable in money, it may be enhanced by an amount not exceeding the whole of the excess of the new assessment over the old.

(2) Where the rent is payable in kind, the increase in the assessment shall be divided between the mulgar and mulgenidar in the proportion borne by the assessment to the new assessment on the land and the rent enhanced by an amount equal to the mulgenidar's share of the increase in the assessment.

(3) Where the rent is payable partly in money and partly in kind, the proportion that the money rent bears to the total rent shall be ascertained and the money rent enhanced by an amount not exceeding

The words " or acquired " have been inserted in this clause in order to provide for cases in which the mulgeni tenure is presumed by the courts although there is no actual lease.

Clause 2 (*b*) on similar principles is intended to exclude cases in which the parties have provided by express contract for the contingency of an enhancement of the land revenue assessment.

Clause 7, which deals with the principles on which rents are to be enhanced, derives its origin from the judgment of the High Court in S.A. No. 582 of 1908 in which Justices Miller and Sankaran Nayar laid down the following principles :—

" The theory of enhancement being that the Government takes a share of the increased value of the produce due to increase in prices, it would follow that *prima facie* the tenant should pay the enhanced assessment if he pays a fixed money rent to the landlord. But where, as here, the rent is paid in kind or partly in kind, so that both the landlord and the tenant lose a proportion of the increased value of the produce, it seems equitable that the enhanced payment should be shared between them, the landlord paying that proportion of the increase which is equal to the proportion which he receives of the produce: in other words each party should pay in this, as in other cases, in proportion to the benefit he derives from his interest in the land."

The application of this general principle in cases in which the rent is payable in kind wholly or in part involves some difficulty. The exact proportion of the benefit derived by the *mulgar* and the *mulgenidar* at the time the *mulgeni* lease was originally granted is not ascertainable in most cases at this distance of time. Any principle of apportionment that may be adopted must therefore be more or less arbitrary. As the benefits arising from enhanced prices and other causes were taken into consideration in fixing the assessment at the resettlement it is proposed to apportion the enhancement between the *mulgar* and the *mulgenidar* in the proportion which the original assessment bears to the final assessment on the land. To provide for hard cases, as for instance where the increase in assessment is due to increase in area or where large areas of waste land have been leased out for nominal rents, it is proposed to invest the Collector with discretion to intervene and make an equitable settlement in cases to which the arbitrary rule is not fairly applicable.

Clause 10.—Subsequent to the decision of the High Court above referred to, many *mulgeni* tenants have brought suits to recover sums which they have paid in discharge of the assessment in excess of their rents. It is not considered necessary to give the Act retrospective effect so far as closed transactions are concerned ; but to avoid inconsistency and the possibility of double remedies, it is thought desirable to provide that all such suits and appeals pending at the time of the notification issued under section 5 of the Act shall be referred to the Collector for disposal under the Act.

GOVERNMENT OF MADRAS

REVENUE DEPARTMENT

No. 1246.

From

THE HON'BLE MR. E. S. LLOYD, I.C.S.,
Acting Secretary to the Government of Madras,
Revenue Departmen

To

THE SECRETARY TO THE GOVERNMENT OF INDIA,
DEPARTMENT OF REVENUE AND AGRICULTURE.

Dated, Stonehouse Hill, The Nilgiris, the 1st June 1920.

SIR,

I am directed to request a reference to the Hon'ble Mr. Kershaw's letter No. 1037-2402, dated 2nd September 1915, in which the Government of India's approval of the provisions of the draft Mulgeni Rent Enhancement Bill submitted with the Hon'ble Mr. L. Davidson's letter No. 1438-A, dated 16th June 1915, was communicated with the observation that, as the measure was likely to be contentious, its introduction into the local Legislative Council should be deferred until after the war. The introduction of the Bill was accordingly postponed: and although nearly five years have elapsed since then, no *modus vivendi* has yet been arrived at between the mulgars and the mulgenidars of the South Kanara district in regard to an equitable distribution of the increased assessment imposed at the resettlement of the district in 1902. There have been representations in public and interpellations in the Legislative Council urging the speedy introduction of the proposed measure. The Hon'ble Mr. C. G. Todhunter discussed the matter at an informal conference, on the 18th and 19th October 1919, with some of the leading gentlemen of South Kanara representing all the interests involved and a revised Bill has been drawn up in accordance with the conclusions of the conference which, it is hoped, will be acceptable to all parties. I am to add that the revised Bill involves no change of principle, but only embodies in itself the procedure, accepted at the conference, in regard to the method of apportionment of the enhanced assessment between the mulgar and the mulgenidar which, in the Bill as originally drafted, was left to be dealt with by rules framed under the Act.

Miscellaneous.

2. The revised Bill is being submitted separately to the Secretary of State and the Government of India in the Legislative Department. It is intended to introduce the Bill at the meeting of the Legislative Council to be held in August 1920, and I am to request that, if the Government of India have any objections to the Bill being proceeded with as proposed above, they will be pleased to intimate their objections as early as possible.

3. A copy of the revised Bill, with the Statement of Objects and Reasons, is enclosed.

I have the honour to be,

Sir,

Your most obedient servant,

E. S. LLOYD,

Acting Secretary to Government.

NOTES CONNECTED WITH G.O. Nos. 1245-46, REVENUE, DATED 1st JUNE 1920

REVENUE DEPARTMENT.

[SUBJECT.—*Mulgeni Rent Enhancement Bill.*]

Please put up the Mulgeni Bill papers for South Kanara district. I should like to see them at 11 a.m. to-morrow.

M. YOUNG—6-2-19.

The papers relating to the Bill are submitted below.

W.A.K.—7-2-19.

The introduction of the Bill was postponed during the continuance of the war, as it is of a controversial nature.

It is not known whether India have withdrawn their opposition to the introduction of controversial measures. Before referring the matter to India, it seems desirable to ask the Collector of South Kanara whether any *modus vivendi* has been arrived at between the mulgars and mulgenidars, which would render legislation unnecessary. An inquiry in this direction was made in 1916, and it was been reported that no *modus vivendi* had been reached (G.O. Mis. No. 936, dated 30th March 1917). Possibly, however, something may have been done in this direction during the last two years. As the Bill is controversial, it would perhaps be as well to ascertain this before India is addressed.

We might also ask the Collector of South Kanara whether there is urgent necessity to introduce the proposed measures now.

M.Y.—7-2-19.

Approved.

A. G. C[ARDEW]—15-2-19.

A draft official memorandum to the Collector of South Kanara is submitted.

K.R.—20-2-19. F. J. NOBES—20-2-19.

[Issued as Official Memorandum No. 259-B/19-1, dated 21st February 1919.]

From the Board of Revenue (Land Revenue) Mis. No. 755, dated 14th June 1919.

The Collector of South Kanara now reports that no *modus vivendi* has been arrived at between the mulgars and the mulgenidars which would render legislation unnecessary and that there is no prospect of an amicable settlement. He considers that legislation should be undertaken as early as possible. The Board of Revenue agrees with the Collector.

2. The introduction of the Mulgeni Rent Enhancement Bill has been postponed at the instance of the Government of India during the continuance of the war. If it is decided to proceed with the Bill, the Government of India will have to be addressed. Please see in this connexion Mr. Young's remarks supra and Sir Alexander Cardew's speech in the Legislative Council in connexion with a resolution on the subject. Orders are requested whether the Government of India will now be addressed to remove the bar on the proposed legislation.

W.A.K.—3-7-19.

(1) The question in issue is whether the Mulgeni Rent Enhancement Bill should be proceeded with. Collector and Board say 'Yes', as no settlement has been arrived at. If this is accepted, Government of India have to be addressed.

(2) Another issue has been raised which does not affect the main question : viz., the procedure for recovery of arrears.

Paragraph 22 of Settlement Notification states that the land should be proceeded against *in the first instance*. If the sale-proceeds are insufficient to pay for arrears, etc., the other provisions of the Rent Recovery Act may be resorted to.

There seems to be no necessity for any circular on the subject.

J. B. BROWN—4-7-19.

The question for orders is whether this Government should ask the Government of India for permission to proceed with the Mulgeni Rent Enhancement Bill.

Mulgeni is perpetual lease. The lessor (mulgar) has no power to alter the terms of the lease; thus, in certain cases in which the settlement enhanced the kist on a mulgeni land, the lessor (pattadar) has actually to pay more to Government than he gets from his tenant. The mulgars have, therefore, been calling out for legislation to enable them to throw the weight of the increased assessment on their tenants.

If they cannot get such legislation, they will probably relinquish. In some countries it would be considered quite a satisfactory thing to get rid of a number of non-cultivating landlords in this way. But the Government has got a Bill ready by which the cultivating tenant can be made to pay the increased assessment instead of the pattadar. The Bill is in flag **A**, which contains the discussions which shaped it.

Incidentally, in reporting on the question whether the proposed legislation is still necessary or not, the Collector of South Kanara has raised a side-issue. It has been ordered that in recovering land revenue on a mulgeni land, the land is to be proceeded against in the first instance. Former Collectors have understood this as including crops standing on the land, but excluding crops gathered from the land. The present Collector thinks that it should include the gathered produce. I submit that he is not right about this.

A. F. G. MOSCARDI—8-7-19.

Mr. Lancashire is clearly wrong in considering that gathered produce can be brought within the definition of the term 'land.'

A The orders of His Excellency the Governor may now be taken as to whether the Mulgeni Rent Enhancement Bill should not be proceeded with in the cold weather. We are practically pledged to this. I don't think any permission of the Government of India is needed, through there is no harm in informing them if we decide to proceed.

B I should like another attempt to be made to get from the Collector some specific information as to the number of concrete cases in which difficulties are now arising between mulgars and mulgenidars which would be ended by the Bill. It has been several times suggested that the number of people affected are very few and not much worth helping, but the Collectors have given us nothing specific on this point, that I can find.

I hope to go down to Mangalore and hear both sides before taking up the Bill, if His Excellency the Governor decides that it is to be introduced.

C. G. T[ODHUNTER]—11-7-19.

B on return from circulation. For orders on **A** supra.

A.F.G.M.—11-7-19.

If any assurance has been given to these mulgars who certainly seem at present in an unfortunate position that we will rectify what is evidently a disability, we ought to go on with the Bill. I will leave it to my Honourable Colleague as to when he can bring it forward but the sooner the better.

W[ILLINGDON]—11-7-19.

With reference to Honourable member's remarks at **B** supra, a draft official memorandum to the Collector of South Kanara is submitted for approval.

N.K.—12-7-19. W.A.K.—12-7-19. J. B. BROWN—15-7-19.

Issue and put up again for circulation to Honourable Member.

J.B.B.—15-7-19.

[Issued as Official Memorandum No. 820 B/19-1, dated 15th July 1919.]

The Official Memorandum to the Collector has issued. The file may now be circulated to Honourable Member for perusal of His Excellency's remarks on page 2 supra.

N.K.—16-7-19. W.A.K.—16-7-19. J.B.B.—21-7-19.

A. F. G. MOSCARDI—22-2-19.

C. G. T[ODHUNTER]—22-7-19.

I noticed in the paper recently that there is to be another discussion of this question by one of the landholders' associations in Madras. Please find out when it is to be and get me a copy of all available papers as soon as possible.

C. G. T[ODHUNTER]—27-9-19.

Reference is solicited to the cutting from 'the Hindu' of 13th September 1919 which announced a meeting of the Executive Committee of the Madras Ryotwari Landholders' Association on 15th September 1919 at which a paper was to be read by Mr. B. Sitarama Rao on "the mulgeni tenure and the incidence of enhanced assessment" and Dr. U. Rama Rao's paper on the subject was also to be considered. No account of the proceedings of the meeting or of the contents of the paper referred to above has appeared subsequently.

The previous papers referred to in the Government Orders (G.O. No. 2154, dated 18th July 1912, G.O. No. 2979, dated 9th October 1913 and G.O. No. 1438, dated 16th June 1915) which were issued in connexion with the proposed legislation are put up.

W.A.K.—30-9-19. J.B.B.—1-10-19.

A.F.G.M.—3-10-19.

Please ask the Secretary of the Association if he will kindly favour me with a copy of Mr. Sitarama Rao's paper and on receipt forward it to me at Mangalore.

C. G. T[ODHUNTER]—6-10-19.

A draft demi-official is submitted for approval with reference to the Honourable Member's order above.

Demi-official—from J. B. BROWN, Esq., I.C.S., Under Secretary to Government, Revenue Department.
To—the Secretary to the Madras Ryotwari Landholders' Association, Madras.
Dated—the 8th October 1919. *No.*—820 B/19-3.

I am to request that you will be so good as to send the Hon'ble Mr. C. G. Todhunter a copy of the paper on "the mulgeni tenure and the incidence of enhanced assessment", read by M.R.Ry. B. Sitarama Rao Avargal, B.A., B.L., at the meeting of the Executive Committee of your Association which was convened for Monday the 15th September 1919.

2. If you will kindly transmit the copy to me at Fort St. George, on or before the 13th October 1919, it will be duly forwarded to the Hon'ble Mr. Todhunter in camp.

W.A.K.—7-10-19.

Demi-official—from Mr. E. V. Sundara Reddi, Secretary to the Madras Ryotwari Landholders' Association.
To—the Revenue Secretary, Fort St. George, Madras.
Dated—the 14th October 1919.

Your letter dated the 8th October 1919 only reached me this morning owing to the insufficiency of the address given on the cover. I am to request you that communications may be directed to be sent in future to the Secretary, The Madras Ryotwari Landholders' Association, 'Ritherdon House', Vepery, Madras.

NOTES TO G.O. NOS. 1245-46, REVENUE, 1ST JUNE 1920

I am sending by book-post to-day six copies of the Proceedings of the Annual Meeting of the Association in which will be found Rao Sahib Dr. U. Rama Rao's paper on 'Some Anamolies of Mulgeni Tenure' and six copies of Mr. B. Sitarama Rao's paper on 'Mulgeni Tenure and the incidence of enhanced assessment."

The Executive Committee of the Association will further consider the subject next week and its opinion on the subject will be communicated to you promptly.

An informal conference was held at the Collector's office, Mangalore, on Saturday the 18th October 1919, under the presidency of the Hon'ble Mr. Todhunter, I.C.S., Member of Council, to discuss the question of the draft Mulgeni Rent Enhancement Bill. The following were among those present:—

PRESENT.

1. The Hon'ble Khan Sahib Hajee Abdulla Haji Kassim Sahib Bahadur.
2. The Hon'ble Mr. N. Subba Rao.
3. Mr. R. H. Ellis, I.C.S., Collector of South Kanara.
4. ,, A. J. Lobo, B.A., B.L., Government Pleader.
5. ,, K. Sadasiva Bhat, B.A., B.L.
6. ,, I. P. Fernandez, Retired District Munsif.
7. ,, Marian S. Pais, B.A., Revenue Divisional Officer, Puttur.
8. ,, K. C. Manavedan Raja, B.A., Revenue Divisional Officer, Mangalore.
9. ,, M. Ananthan Nair, B.A., Revenue Divisional Officer, Kundapur.
10. Diwan Bahadur M. M. Bangera, Retired District Judge.
11. Mr. U. C. Krishna Bhat, B.A., B.L., High Court Vakil.
12. ,, A. Srinivasa Poi, B.A., B.L.
13. ,, K. Sadasiva Rao, B.A., LL.B., Secretary, South Kanara District Association.
14. ,, B. Rama Rao, Taluk Board President, Puttur.
15. ,. K. Lakshminarayana Rao, B.A., B.L., High Court Vakil.
16. ,, K. P. Achuthaya, do.
17. ,, M. Lakshumana Rao.
18. ,, Muhammad Schamnad, District Board Member.
19. ,, J. V. Alvares.
20. ,, J. Naganna Hegde.
21. ,, H. Madapaya.
22. ,, K. Rajagopalakrishna Rao.
23. ,, Sivarama Karnik.
24. ,, M. Dharmanna.
25. ,, Bagganna Gurikar.

The Hon'ble Mr. Todhunter in opening the proceedings thanked the gentlemen who were present for having come to advise him on the subject of the legislation to be undertaken in order to enable the mulgars to meet the enhancement of rent which had resulted from the new settlement and which they were unable under their mulgeni leases to recover from their tenants who hold their land on a perpetual lease. He said that it was his misfortune and not his fault that he had never served in their beautiful district and so had an opportunity of becoming directly acquainted with their interesting national characteristics, one of which was represented in the system of land tenure. He assured them that the Government had no intention of interfering with their national characteristics for the purpose of forcing them all into one uniform mould and was anxious to do what it could to preserve them. The difficulty that had stood in the way of passing the necessary legislation was the difficulty of finding any general formula which would satisfy all the various classes of cases that arose. He proposed to them that the meeting should discuss the subject under three heads: firstly, the circumstances indicating the necessity for legislation; secondly, the nature of the different classes of leases in force; and thirdly, the nature of the legislation necessary which, he suggested should be tested by applying it to individual concrete cases which had arisen or were in the minds of members of the conference.

2. As regards the first point, the meeting were generally unanimous in thinking that legislation was necessary. In reply to inquiries as to why there had not been more litigation on the subject than appeared from the statistics that were available, the Hon'ble Mr. Subba Rao and Mr. Sadasiva Bhat stated that a large amount of litigation was held in suspense in the hopes that the Government were going to settle

the matter by legislation. They agreed that certain number of claims which were more than 10 years old had been liable to lapse by limitation, but urged that inasmuch as the claim was a recurring one, limitation did not operate to bar it altogether. Various schemes for dealing with the question by executive action and without resort to legislation were discussed, but the general opinion of the meeting was that none of them would be completely satisfactory.

3. In the second place, a number of concrete instances illustrating the different classes of mulgeni leases were cited by Mr. Fernandez and others. It was agreed, however, that, generally speaking, the mulgeni leases could be brought under three classes, viz., those in which the rent was in money, those in which the rent was in kind and those in which the rent was partly in money and partly in kind.

4. On the question of the nature of the legislation desirable, it was generally agreed that the mulgenidar ought to bear the bulk of the enhanced assessment and that where the lease amount was fixed in money he should bear the whole. The question whether, where the lease amount was fixed partly or wholly in kind, the landlord should also bear a part of the enhancement, proportionate to the benefit which he derived from enhancement of prices or otherwise, was discussed at some length. The sense of the meeting was in favour of debiting the landlord or mulgar with a proportion of the enhanced assessment in proportion to the benefit derived by him from the land.

5. A representative of the mulgenidars who opposed this suggestion was anxious to fix the mulgar's interest in the land with reference to the price of paddy prevailing at the time of giving the lease, but was not prepared to name a definite proportion in which the enhancement should be divided between the mulgar and mulgenidar, respectively. The general sense of the meeting was in favour of legislation on the lines of clause 8 of the draft Bill.

6. For further discussion of the details of the Bill, a sub-committee consisting of the Hon'ble Mr. N. Subba Rao and Messrs. U. C. Krishna Bhat, K. Srinivasa Poi, K. Lakshminarayana Rao, K. Sadasiva Bhat, A. J. Lobo and Mr. J. Naganna Hegde was appointed and they agreed to go into the matter in detail and wait on the Honourable Member with the result on the following day. The Honourable Member having thanked the gentlemen present for the advice given, Mr. U. Krishna Bhat tendered the thanks of the meeting for the patient hearing of their representations. The meeting then dispersed.

The matter was further discussed with the sub-committee on the 19th October at the Collector's bungalow.

After a prolonged discussion as to the principles on which the enhancement of rent was to be made, it was agreed that, owing to absence of any information with reference to which the initial income of the mulgenidar could be ascertained, it was necessary to adopt some arbitrary principle, and that the arbitrary principle which would be fairest to both parties would be to divide the enhancement in the proportion borne by the initial assessment to the final assessment, the former part to be paid by the landlord and the latter by the tenant.

2. In cases in which the initial assessment on the individual fields was not known, this should be ascertained in the manner indicated in paragraph 6 of B. Reference No. 3247-Pt./10-3, dated 23rd January 1912 (page 16 of G.O. No. 2154, dated 18th July 1912).

3. A special staff will be necessary for the ascertainment of the initial assessment and for the calculation of the proportions in which the enhancement is to be made.

4. This should be under the control of a special settlement officer, who might be a deputy collector, from whose orders an appeal would lie to the Collector

5. Special provision should be made for the settlement of hard cases by the Collector on general principles of equity.

6. All applications for adjustment under the Act should be made within six months from a date to be fixed by notification, but the Collector should be given power to deal with cases which might occur later, on special cause being shown, the

case of suits resulting in a declaration of mulgeni right in respect of land in regard to which no mulgeni lease is actually forthcoming being specially considered. Other sufficient causes would be minority, absence from the district and the like.

7. All suits for the recovery of sums paid by tenants in consequence of the increase of assessment, whether pending or hereafter brought, should be referred to the Collector for disposal by him or the settlement officer in accordance with the principles laid down in the Act.

8. The above relates to cases in which the rents are wholly or partly in kind. In cases in which the rents are wholly in cash, the whole increase should be paid by the tenant as already agreed. Similarly for the cash portion when the payment is partly in cash and partly in kind.

9. The Bill will need to be recast in accordance with the above principles.

Add to Clause 2 (*a*).—The words 'or came into existence' after the word 'executed' in order to provide for the case in which mulgeni tenure is presumed by the Courts although there is no actual lease.

Clause 5 (2).—Amend as follows:—

The application should be made within six months from the date fixed by the Governor in Council by a notification published in the official Gazette. It shall be in such form as the Governor in Council may prescribe and shall be accompanied by such fees as may be fixed by the Governor in Council. The District Collector may, for special reasons to be recorded in writing, entertain any application presented after the date notified as above.

Clause 7 (1).—"Where the rent is payable wholly or partly in money, such whole or part shall be enhanced by an amount equal or proportionate to the excess of the new assessment over the old."

Clause 7 (2).—"Where the rent is payable wholly or partly in kind, so much of the increase in the assessment as relates to such whole or part shall be divided between the mulgar and the mulgenidar in the proportion borne by the original assessment to the final assessment on the land.

"Provided that where good cause is shown for believing that such a division would be inequitable, the District Collector may make the apportionment in accordance with general principles of equity.

"Provided further that the increase in rent shall always be in money."

Add a new clause:—

"In cases in which the initial assessment on individual fields is not known, such assessment should be calculated by the Special Settlement Officer by apportioning the old assessment of the warg among the survey fields comprising it, according to the proportion which the settlement assessment of each survey fields bears to the settlement assessment of the whole warg."

Clause 8, *new clause* 9.—From every decision under section 6 an appeal shall lie to the District Collector and from every decision of the District Collector under section 7 an appeal shall lie to the District Court.

Clause 9.—The enhancement is determined under section 6 or section 7 or section 8 as the case may be.

Clause 9 (2).—*For* 'District Collector' *substitute* 'District Court.'

Clause 10.—From and after the date fixed in the notification issued under section 5, no suit shall lie by any mulgenidar for the recovery of sums paid in consequence of the increase in assessment and all such suits or proceedings as are pending in the Civil Courts on the date above referred to shall be referred by the Courts concerned to the Collector for disposal under this Act.

Clause 11 (3).—Omit and renumber.

The above seem to be the amendments necessary to carry out the conclusions of the conference. Please carry them out in a copy of the Bill and draft a fresh Statement of Objects and Reasons and send copies under cover of demi-officials to the Hon'ble Mr. N. Subba Rao and Dr. U. Rama Rao for favour of opinion. Let me see the drafts.

C. G. T[ODHUNTER]—28-10-19.

The amended Bill and Statement of Objects and Reasons are submitted below.

J.B.B.—3-11-19. | They will be typed after approval by Secretary and before circulation to the Honourable Member.

Demi-official—from J. B. BROWN, Esq., I.C.S., Under Secretary to Government, Revenue Department.

To—{ the Hon'ble Mr. N. SUBBA RAO, Manglore. / Rao Saheb Dr. U. RAMA RAO, No. 323, Thambu Chetti Street, Madras.

Dated—26th November 1919. *No.*—820-B/19-5.

I am to enclose, for favour of your remarks, drafts of the Mulgeni-Rent Enhancement Bill and of the Statement of Objects and Reasons, which have been revised so as to embody the conclusions arrived at at the informal conference held by the Hon'ble Mr. C. G. Todhunter at Mangalore on the 18th and 19th October 1919.

I have made some further amendments. In particular I think the provision for a Special Settlement Officer is unsuitable. It is better to give powers to the Collector and take power to delegate to whom we may think fit. Under the reformed Government it may even be thought desirable to refer cases to panchayats.

2. Please print up sharp and send copies to Mr. Couchman and Mr. Ellis also for favour of remarks. Is there any other officer of South Kanara experience whose opinion would be valuable?

3. Meanwhile please see whether a further reference to India is necessary or whether we can go ahead with the Bill at the next Council meeting after November.

4. Send copies of the press communiqué about the conference with the demi-official. Mr. Gwynn probably has spares.

C. G. T[ODHUNTER]—6-11-19.

The draft Bill with the Statement of Objects and Reasons as amended by the Honourable Member has been printed and placed below.

2. Besides Messrs. Couchman and Ellis mentioned by the Honourable Member, the following officers have experience of South Kanara:—The Hon'ble Mr. R. A. Graham, Mr. Moir, Mr. MacIver, Mr. R. B. Wood and Mr. J. K. Lancashire. Of

J.B.B.—21-11-19. | these officers, Mr. Moir has been granted leave. It is for orders to which of the

other officers the Bill will be sent for remarks in addition to Messrs. Subba Rao and Rama Rao.

3. As regards the question whether a further reference to the Government of India will be necessary before the Bill is introduced, it is submitted that, as the amendments now made to the Bill do not affect the principle of the Bill as accepted by India, no further reference to them appears necessary, as the war is now practically over (please see the Government of India's letter on page 2 of G.O. No. 2198, Revenue, dated 29th September 1915).

N.K.—20-11-19. W.A.K.—20-11-19. J. B. BROWN—21-11-19.

Please see the Honourable Member's remarks supra. Copies may be sent to Messrs. Couchman, Ellis, Graham, MacIver, Wood and Lancashire.

N.K.—22-11-19. W.A.K.—22-11-19. J.B.B.—22-11-19.

Eliminate Wood. He was only there for a short time as Judge, I think, others approved.

E. S. LLOYD—25-11-19.

Demi-official—from S. W. G. I. MACIVER, Esq., Collector of Vizagapatam.
To—the Hon'ble Mr. E. S. LLOYD, I.C.S., Secretary to Government, Revenue Department.
Dated—Waltair, the 4th December 1919.

I return the draft Mulgeni Rent Enhancement Bill with a few remarks in the margin.

Section 7.

I have little acquaintance with South Kanara, but on general principles I do not see why the mulgar who receives rent in kind should need any relief at the expense of the tenant. If the expenses of cultivation have increased proportionately to the increased prices, if the gross outturn has remained the same, and if Government takes the same proportion of the net produce, then the shares of the mulgar and mulgenidar, namely, the rent less assessment and the net outturn less rent will bear the same ratio as formerly, when valued in money—

(1) Where the rent is payable wholly in money the rent shall be increased by an amount equal to the increase in the assessment.

(2) Where the rent is payable wholly in kind the rent shall be increased so as to divide the additional assessment between the mulgar and the mulgenidar in the ratio borne by the old assessment to the new assessment.

(3) Where the rent is payable partly in money and partly in kind the ratio of the money rent to the rent in kind shall be ascertained and the additional assessment on the land shall be divided into two parts in the same ratio, and the part proportionate to the money rent shall be added to the money rent, and that proportionate to the rent in kind shall be dealt with as in clause (2).

Owing, no doubt, to my own density I find that I could not understand section 7 (1) and 7 (2) without the assistance of the accompanying papers and I therefore suggest the above as more easy of comprehension.

Section 7.

Why not divide the additional assessment, in the case of rents in kind, between the pattadar and tenant proportionately to benefits recently derived by each from the land? No doubt it would be difficult to ascertain what these were at the time of the introduction of the old settlement; but perhaps it would not be too difficult to ascertain roughly what they were immediately before the introduction of the new settlement. And to divide the additional burden on this basis would seem to be less arbitrary than what is now proposed.

Commutation will also be necessary for the purpose of clause (1) of section 7, so in section 12, clause 5 'section 7' may be substituted for 'section 7 (2).'

Demi-official—from the Hon'ble Mr. N. SUBBA RAO.
To—E. S. LLOYD Esq., I.C.S., Secretary to Government, Revenue Department.
Dated—Madras, 14th December 1919.

With reference to your demi-official, dated 26th November 1919, I beg to state that I have no remarks to offer as the amended Bill is in accordance with the resolutions which we arrived at the informal conference held by the Hon'ble Mr. C. G. Todhunter.

Demi-official—from Rao Sahib U. RAMA RAO, Physician and Surgeon, Madras.
To—E. S. LLOYD, Esq., I.C.S., Secretary to Government, Revenue Department.
Dated—the 18th December 1919.

I enclose herein a statement of my remarks on the draft of the Mulgeni Rent Enhancement Bill, received with your D.O. No. 820B/19-5, dated 26th November 1919

MULGENI RENT ENHANCEMENT BILL.

Section 2, clause (*b*)

By reason of this clause, section 2 will be inapplicable to cases (i) where there has been a relinquishment by the landlord of his interest before the Act and (ii) where there has been an assignment of the landlords' interest before the Act but there are outstanding claims in respect of assessment paid by the tenant. Omission of this clause would bring those

cases within section II. Even with this clause, the definition of mulgar does require amplification as the word lessor would not, properly speaking, include the assignee of the reversion.

Section 2, clause (*c*).

Cases where the contracts have been entered into subsequently to the date fixed also should be excluded. If the tenants have had better terms than the Act is likely to allow to them, it would only be a fair reward for their sense of justice and fair play.

Section 3, clause (2).

The Act should make special provision for the apportionment of the enhanced assessment between the lessee and sub-lessee or mortgagee. Under the Bill as it stands, the lessee will be able to throw the whole liability on the sub-lessee or the mortgagee. This does not seem to be fair.

Section 7.

Must fix the time from which the enhancement should take effect. It must take effect at least for the tenancy year of the application.

Sections 9 and 10.

The appeal should be in all cases to the District Judge.

Section 11.

Provision for transfer to the Collector for disposal notwithstanding, the Collector would not have power to act under section 7 unless that section is specifically made applicable for proprio vigore that section applies only to cases where there has been an application by the mulgar. To make that section applicable it must be specifically provided that "the Collector shall hereafter proceed to dispose of the case as if there was an application by the mulgar, etc. To carry out the object intended by the section the enhancement should be given retrospective effect so as to apply to the period to which the claim relates. Again, the question might arise as an issue in a suit; in such cases, the court must have power to refer the particular issue alone.

One further suggestion that I would make is—as in good many cases, the nature of the tenure is a matter of great doubt, the court should be authorized in all proper cases to remit an issue as to apportionment to the Collector irrespective of the time limit fixed in the earlier portion of the Act. The inconvenience that might result from the quality would not be felt if the suggestion as to appeal to the District Court is adopted.

(5)

Demi-official—from M. E. COUCHMAN, Esq., I.C.S., Commissioner of Land Revenue.

To—the Hon'ble Mr. E. S. LLOYD, I.C.S., Acting Secretary to Government, Revenue Department.

No.—214, dated Madras, the 18th December 1919.

Your demi-official No. 119, dated 27th November 1919. I enclose my note on the Bill.

1. Paragraph 2 (*c*) states that no order or decree of a civil court passed before the Act comes into force shall operate to prevent the application of the Act to any such lease.

In paragraph 4 of my letter at page 11 of G.O. No. 2979 of 9th October 1913, I pointed out that provision should be made to protect mulgars who, under pressure of the High Court decision, might have assumed more liability for the increased assessment than they would have done otherwise.

There were cases where the mulgenidars actually brought suits against their mulgars, claiming not only the refund of the amount by which the new assessment exceeded the old rent payable by them to the mulgar, but also of the whole of the new assessment, even when this would involve not merely not paying any rent at all to their landlord but also of recovering an additional amount from the landlord.

Example.

	RS.
Old assessment	5
Old rent	10
New assessment	15

In some cases the tenants sought to recover the difference of Rs. 5 from the mulgar, who would then not only not get any rent at all, but would also be mulcted of Rs. 5 per annum so long as he remained the mulgar.

To avoid this, I believe that in a few cases the mulgar agreed to pay, for example, half the new assessment. Under the arrangement now proposed, the tenant would pay the whole increase of Rs. 10, when the rent is in cash.

In paragraph 3 of its Proceedings at page 16 of the same Government Order the Board approved of this but the point seems to have been lost sight of subsequently.

Where the mulgar, under this pressure, has actually surrendered his right to the land altogether, he would not be entitled to revoke his surrender of the land, because clause 2 (*b*) of the present Bill restricts its operation to cases where the relation of mulgar and mulgenidar subsists at the date of the passing of the Act.

The Board (page 19 of the Government Order quoted above) did not approve my proposal to permit the mulgar to revoke his surrender of the land, and after so much time has elapsed, and subsequent transfers, etc., of land may have taken place, I do not now press for this, but I do think that where the mulgar still retains his interest in the land, he should be enabled to escape from the one-sided contract, which he entered into at a time when he had no hopes of redress, to escape persecution at the hands of the mulgenidar. Perhaps the words " or any other contract entered into between the parties " might be inserted in 2 (*c*) after the words " no order or decree of a civil court."

2. The whole difficulty is in the apportionment of the increase in assessment between the landlord and tenant.

There are three cases :—

(1) Where the rent is wholly in cash.

Here the whole benefit of the rise in prices since the lease was executed (in addition to the benefit of any increase in cultivation) has accrued to the tenant, and therefore it is perfectly right that he should pay the whole increase. This was accepted in the Conference at Mangalore.

(2) Cases where the rent is paid wholly in kind.

(3) Where the rent is paid partly in kind and partly in cash.

3. The proposal in the notes of the Conference is that the enhancement is to be divided " in the proportion borne by the initial assessment to the final assessment, the former part to be paid by the landlord, the latter by the tenant."

This would seem to mean (to take a concrete case) that

	RS.
Old assessment	100
New ,, ...	150
Increase	50

Landlord will pay two-fifths of fifty and the tenant three-fifths.

The Bill itself reverses this arrangement [7 (2)] " shall be divided between the mulgar and mulgenidar in the proportion borne by the new assessment to the old assessment on the land."

In the case given above, the landlord would have to pay Rs. 30 out of the increase of Rs. 50 and the tenant Rs. 20.

I do not consider either proposal satisfactory, inasmuch as no attempt is made to distribute the assessment in proportion to the benefits derived by each party from the land.

4. The penultimate sentence of the Notes of the Conference is as follows :—

"The above relates to cases in which the rents are wholly or partly in kind. In cases in which the rents are wholly in cash, the whole increase should be paid by the tenant as already agreed. Similarly for the cash portion when the payment is partly in cash and partly in kind."

Paragraph 7 (2) of the Bill runs " where the rent is payable wholly or partly in kind so much of the increase in the assessment as relates to such whole or part shall be divided, etc.'

These two passages assume that the rent on each piece of land included in the lease is known, and that part of the holding for which cash is paid can be identified as separate from the part on which rent is paid in kind.

This assumption is incorrect. The rent of two-crop lands is usually paid in kind, but the rent of one-crop lands and of gardens is sometimes in cash and sometimes in kind, and almost every holding includes both one-crop and two-crop lands, and often bagayats as well. Two specimen mulgeni leases are attached for illustration.

It will be seen that a lump sum of money and a lump total of rent in kind is imposed on the holding as a whole. Neither tenant nor landlord would be able to say what the rent was for any particular field. It would, therefore, be impossible to distribute the increase in the assessment in the manner proposed by the Bill. The Bill is, therefore, unworkable.

I do not understand the statement made in paragraph 2 of the Notes of the Conference relating to the ascertainment of the *original income of the mulgenidar*.

I consider that the Bill originally drafted in 1915 is preferable to the present Bill.

(6)

Demi-official—from J. K. LANCASHIRE, Esq., I.C.S., Acting Collector of South Arcot.

To—the Hon'ble Mr. E. S. LLOYD, I.C.S., Acting Secretary to Government, Revenue Department.

No.—58, dated the 4th January 1920.

With reference to your demi-official No. 820 B/19–5, dated 26th November 1919, on the proposed Mulgeni Rent Enhancement Bill, I write to say that I am in agreement with the principles on which the Bill has been framed, and am of opinion that the Bill is necessary; but I feel some doubt about the accuracy of the drafting of section 7 (2) and submit for consideration some minor alterations in the wording of the objects and reasons in two places.

The important passage that requires study is :

"7. If the Collector..... .....he shall make an order for the enhancement of the rent on such mulgeni lease in accordance with the following provisions ...."

(2) Where the rent is payable wholly or partly in kind so much of the increase in the assessment as relates to such whole or part shall be divided between the mulgar and mulgenidar in the proportion borne by the new assessment to the old assessment on the land.

"Provided..... ....."

It seems to me that a defect in drafting arises because the phrase 'Shall be enhanced' which is the principal verb in sub-clause (1) has nothing to do with sub-clause (2) where the principal verb is " shall be divided.'

The substance of the sub-clause (2) shows that it is dealing with 'enhancement' and is not dealing with 'division'. The enhancement to be made in the mulgar's rent is not the divided share of the enhancement of assessment that is to fall on the mulgar, but the divided share of the enhancement of assessment that is to fall on the mulgenidar.

To make the sub-clause (2) clear it would be preferable to introduce the verb 'enhance' as the principal verb and relegate 'divide' to a subordinate clause, but I find it difficult to frame a satisfactory draft, and have been compelled to retain 'divide' as the principal verb, reverse the proportions, and introduce a supplementary and explanatory clause explaining the enhancement.

I suggest the following :—

" When the rent is payable wholly or partly in kind, so much of the increase in the assessment as relates to such whole or part shall be borne by the mulgar and the mulgenidar

dividing it in the proportion of the old assessment to the new assessment on the land by increasing the rent by an amount which bears the same proportion to the increase relating to such whole or part, as the new assessment bears to the sum of the old and new assessments on the land."

Probably a better draft can be devised, but this conveys the meaning, while the draft Act as it stands has reversed the proportions owing to confusion between division (in incidence of the increase) and the enhancement (of the rent) necessary to have the desired net enhancement of assessment to be borne by the mulgar after payment of the full assessment by the mulgeni tenant, with the right to deduct it from the revised gross rent under section 35 of the Madras Revenue Recovery Act, 1864.

Turning to the statement of objects and reasons the two passages which require reconsideration are—

In paragraph 2.—"And is *often considerably* in excess of the rents received in their leases."

In paragraph 4.—"Difficulty in assessing the benefit derived by either party from the land at the time *of the settlement of 1819*.

The wording I suggest is—

"and is *sometimes even* in excess of the rents accrued in their leases." My impression is that such cases are rare and are traceable either to the planting up of dry land as garden, on conversion into paddy fields, or else to family settlements.

I consider it undesirable that the proposed wording should be used as it constitutes an admission by Government of a hardship more severe than I believe to exist.

I believe the hardship in the class of cases alluded to is inconsiderable, as the gross mulgeni rent even before settlement left the mulgar only a small income. I regard such cases as exceptional and not covering any large proportion of the justification for this legislation.

In clause 4 I suggest the wording "difficulty in assessing the benefit derived by either party from the land at the time *the mulgeni lease was originally granted*."

The reference to the settlement of 1819 is inapplicable to mulgenis granted between 1819 and 1902 which may very likely be the majority of the leases in existence.

Demi-official—from Hon'ble Mr. R. A. GRAHAM, Esq., I.C.S., Chief Secretary to Government.
To—the Hon'ble Mr. E. S. LLOYD, I.C.S., Secretary to Government, Revenue Department.
Dated—dated the 4th March 1920.

I must apologize for delaying so long my answer to your demi-official No. 820 B/19-5, dated 26th November, on the subject of the Mulgeni Bill.

I am afraid I have no very recent acquaintance with the situation in South Kanara; and if I am wrong in any of my facts, I hope it will be rememberd that it is eight years since I left the district. I was Collector there however not very long after the question of the position of the mulgar came into prominence as the result of the decision of the High Court in S.A. No. 582 of 1908 and I think that it was in my time that the necessity for legislation began to be urged. It was then represented that there was urgent need of immediate legislation; that as the result of this decision, on the top of the settlement, not only were many mulgars deprived of all benefit from land which they nominally owned, but in many cases the assessment exceeded the mulgeni rent and the mulgenidars were not satisfied with paying their landlords nothing but went to the cruel extreme of suing the mulgars personally for the recovery of the payments made in excess of the rents. The mulgar's remedy of course was to relinquish, but generally, for sentimental or other reasons, he was averse from doing so and was reduced to the necessity of paying his tenant for occupying his land.

There is no doubt that the mulgenidar the assessment on whose land exceeded his rent was in a position to make things nasty for the mulgar, and I was inclined to sympathize a good deal with the latter. Subsequent events however have made me doubt whether there is a very large number of mulgars in need of any very special treatment. I do not know in what proportion of cases the assessment exceeds the mulgeni rent; but it is admitted that in the past eight years there has been little litigation. It is stated that the parties have suspended litigation in the anticipation that the mulgar would obtain relief by legislation, but if this is so the mulgenidars as a body have shown an astonishing measure of forbearance. It is hardly credible that any large number of them would have failed to take advantage of their opportunities. Of course, it is possible that the mulgars have without question been paying the whole of the asssessment, but that this has been the general solution is not borne out by the reference, at the meeting held by the Hon'ble Mr. Todhunter, to the fact that claims were becoming barred by limitation. 'Claims' in this context must mean claims by mulgenidars for the refund by the mulgars of assessment paid in excess of the rent.

I believe it was perfectly realized at the time of the settlement that in many cases the assessment would absorb the whole of, or even exceed, the mulgeni rent, and it was anticipated that in such cases the mulgar would relinquish his patta. This eventuality was contemplated,

with equanimity as bringing about the elimination of a middleman between the Government and the cultivating ryot; and the history of mulgeni, so far as it was known, was held to justify this elimination.

The mulgar is the high caste landowner often, though perhaps not habitually, an absentee; and though his rights in the 'land' have been admitted and it may be regarded as a harsh measure to deprive him of them, it appears necessary also to protect the mulgenidar, who has been far less successful in putting forward his side of the question and has been more or less ignored in the discussions which have taken place; and I think that the suggestion of the High Court for the apportionment of the enhanced assessment, which has been followed in the proposed legislation, takes too little account of the various ways in which the tenure originated. There is no doubt that in many cases the grant of a mulgeni lease was for a consideration, material or otherwise; it may have been on account of family affection, as in the case of a marumakkatayam father desirous of providing for his own children; or it may have been for a cash payment or on the lines of a Malabar kanom. More frequently however, in all probability, the mulgeni tenant was given undeveloped land and the rent was fixed in consideration of the fact that he had to make it fit for cultivation. It must be remembered that the earlier settlements of South Kanara bore no very close relation to the extents occupied. Each man had his 'warg', the term signifying a page in the ledger on which were recorded the payments due from him; and if any measurements were given, I think I am right in saying that, when the district came to be surveyed, in the vast majority of cases, the extents in occupation were found to be largely in excess of the extents on record. The increase in the total assessment of the district, as fixed at the settlement, was due far less to the increase in the prices of produce than to the increase in the area brought on record as under occupation and cultivation. It is only in the case of comparatively recent assignments that the old assessment on any individual field can really be ascertained; for the rest, for the purposes of the settlement records the total of the former assessment on the whole warg has been divided arbitrarily among the individual fields comprised in the warg in the proportion which the new assessment of each field bears to the total assessment; in fact the figures entered as representing the old assessment are entirely imaginary. The wargdar always claimed rights not only over the land in his actual occupation but also over adjoining lands up to the nettikattu, or water-shed; and much of the extension of cultivation which took place between, say, 1819 and 1890 took the form of the grant of mulgeni leases for land which had not been cultivated prior to the grant and for the occupation of which the mulgar paid no additional assessment. All the capital sunk in the land was thus the mulgenidar's and his payment of rent to the mulgar was merely an incident of the privileged position of the latter in that he in practice controlled the possession of all land adjacent to his own and could prevent its cultivation without his consent. The question is mixed up with that of kumaki; it has been a matter of dispute whether the kumaki rights in respect of mulgeni land remained with the mulgar or passed to the mulgenidar, and I am not sure what decision has been arrived at; but my impression is that Government have for many years now refused to recognize the nettikat claim and that the refusal of recognition—which involved a denial of the privileges claimed by the mulgar was a prominent feature of the settlement.

The suggestions of the High Court for the apportionment between the landlord and the tenant of the increase in the assessment are based on the assumption that the enhancement of the assessment at the settlement was due entirely to the increase of prices; but as stated above the increase of prices had less to do with the enhancement of the assessment than the ascertainment of the correct areas, and therefore the assumption, having insufficient basis in fact, cannot be taken as a starting point for an equitable apportionment. There seems to be no reason why, when the mulgar has been found to be receiving rent for a much larger area than he was supposed to own, he should not be expected to pay more in assessment than he did before the discovery was made. It was, I think, the complicated history of the question and the impossibility of finding a really equitable solution which influenced Mr. Pinhey to suggest that, if any relief was to be given to the mulgars, it must be on even more arbitrary lines than those of the proposed Bill; these considerations certainly coloured the recommendations I made in a former report on the same subject. I cannot now remember the details of those recommendations, but I think the main suggestion was that the mulgar should pay one-third and the mulgenidar two-thirds of the difference between the old assessment and the new and that hard cases should form the subject of special inquiry. Seeing however that delay in legislating has caused in fact so little trouble, I am beginning to doubt whether legislation is necessary at all. The settlement went to one extreme in that it threw the whole burden of the assessment on the mulgar and in many cases threatened his extinction; the present proposal goes to the opposite extreme and would benefit him more than he has any right to expect; and of the two results I am not sure that the first is not preferable. In any case I am certain that clause 7 of the Bill as drafted will not bring about an equitable division of the responsibility.

The following demi-official to Mr. Ellis is for approval.

N.K.—8-1-20. W.A.K.—8-1-20.

Issue.

E. S. LLOYD—8-1-20.

Demi-official—from J. B. BROWN, Esq., I.C.S., Under Secretary to Government, Revenue Department.
To—R. H. ELLIS, Esq., I.C.S., Collector of South Kanara.
No.—820 B/19-6, dated 8th January 1920.

In continuation of my demi-official No. 820-B/19-6, dated 26th November 1919, I am to enclose copies of the opinions of Couchman and Graham on the draft Mulgeni Rent Enhancement Bill and to request that you will take them into consideration when forwarding your own opinion on the Bill. A very early reply is requested.

Demi-official—from R. H. ELLIS, Esq., I.C.S., Collector of South Kanara.
To—the Hon'ble Mr. E. S. LLOYD, I.C.S., Acting Secretary to Government, Revenue Department.
No.—Dis. 1-D/Tour, dated Camp Puttur, the 17th January 1920.

In reply to your demi-officials Nos. 820-B/19-5, dated the 26th November, and No. 820-B/1916, dated the 8th January, regarding the Mulgeni Rent Enhancement Bill, I send you the following remarks upon the provisions of the Bill.

2. *Section* 2.—No provision is made for the cases where an existing lease may in the future be declared by the courts to have been all along a mulgeni lease and such cases would thus be excluded from the benefit of the Act. Such cases occur when an original oral lease has been continued for many years and the parties finally dispute whether it is chalgeni or mulgeni. I would suggest the addition to section 2 (*a*) of the words 'or which may hereafter be declared by a court to be mulgeni leases subsisting from a time prior to such date'

3. *Section* 2 (*c*).—I quite agree with Couchman that some relief is necessary for the mulgar in cases where he has under pressure entered into a one-sided contract with his tenant and bound himself to make payments of assessment which under the Act he would not be required to do. I would suggest insertion of the words 'on any contract between the parties regarding payment of the new assessment made' after the words 'civil court passed' in section 2 (*c*). I do not think that any relief can now be given to mulgars who may have under pressure surrendered their rights altogether to the mulgenidars. This would be upsetting too much the interests which have since arisen.

4. *Section* 5.—If the proposed amendment to section 2 (*a*) is adopted, a slight amendment will be required here also. The proviso might read: 'Provided that the Collector shall in cases in which the lease may hereafter be declared by a court to be a mulgeni lease and in other cases for special reasons to be recorded in writing may entertain'

5. *Section* 7.—Couchman has I think misunderstood the provisions of this section. It is clear that in cases of rent payable partly in money and partly in kind the enhancement in respect of the money portion is first to be determined under sub-section (1) proportionately to the excess of the new over the old assessment and the balance of the assessment is thus to be apportioned between the parties under sub-section (2). There is no necessity as Couchman seems to think to determine on which portion of the land the rent is paid in money and on which portion it is paid in kind. But that Couchman could misunderstand the section as at present worded, I think sufficiently condemns the drafting and I myself greatly prefer the form in which the section stood in the draft of 1915 which is quite clear. The only change required in that draft is to modify section 7 (2) as follows:—

7 (2). Where the rent is payable in kind, the increase in the assessment shall be divided between the mulgar and mulgenidar in the proportion borne by the old assessment to the new assessment over the land.

I presume that the reversal of the words 'new' and 'old' in section 7 (2) of the draft is a clerical slip for the intention of the Conference held at Mangalore certainly was that the tenant should bear the bigger portion of the increase.

6. I believe that the method of distributing the increased assessment in proportion to the new and the old assessments is as good an arbitrary method as can be devised. Couchman considers it unsatisfactory because it makes no attempt to distribute the assessment in proportion to the benefits derived by the parties from the land. This formula as to distribution according to benefits was laid down by the High Court and looks extremely well on paper but when one comes to analyse the benefits derived by a landlord from the land under a permanent lease, one finds that they are fixed and determined and that all increased benefits go to the tenant only. The only increased benefit accruing to the landlord is that arising out of the increase in the price of rice where rent is paid in kind and it is in consideration of this that where rents are paid wholly or partly in kind, a proportion of the increased assessment has been thrown upon the landlord. But it would be obviously quite impossible to adjust this proportion by calculations based on increases in the price of rice, as to be fair it would have to vary from year to year.

7. The most important case where the proposed method of distribution would prove inequitable is that pointed out by Graham, namely, where the increased assessment is due mainly to an increase in the area assessed. I can find no complete answer to his objection that in such cases

the increase should be borne by the landlord. Obviously in many cases it should be borne by the landlord and it is quite unfair to throw it upon the tenant. But in others where the landlord has leased out large areas of waste land for nominal rents, the whole benefit of the improvements accrues to the tenant and it is obviously just that he should bear the whole or the greater part of the increased assessment. It seems impossible to make any provision in the Bill for such cases. Each will have to be dealt with on its merits. I would however retain the proviso to section 7 in the new draft and add after the words 'Provided the would be inequitable' the words 'and particularly where the increase in the assessment is due to an increase in the area assessed'. This would make it clear that this was one of the factors to be considered.

8. *Section* 10 (2) provides for an appeal only to the District Collector whereas section 9 gives an appeal to the District Court I do not understand the reason for this difference and would suggest transposing sections 9 and 10 and adding in the new section 10 the words 'or section 9' after 'section 7' in the second line and again after the words 'section 7' in the last line but one, and omitting section 10 (2).

9. Graham is of opinion that legislation is not required. But I think that all parties now are anxious to have the matter definitely settled and the only way in which this can be done is by legislation. The Conference at Mangalore composed of both landlords and tenants was unanimously in favour of legislation.

The opinions of the gentlemen * consulted on the draft Mulgeni Rent Enhancement Bill, as revised by Honourable Member after the informal Conference held at Mangalore in October 1919, will be found at pages 8 to 14 above. The Hon'ble Mr. N. Subba Rao has no remarks to offer. The remarks of the other gentlemen are dealt with below :—

The Hon'ble Mr. Graham.
The Hon'ble Mr. Couchman.
Mr. Ellis (Collector of South Kanara).
„ Lancashire (Collector of South Arcot).
„ MacIver (Collector of Vizagapatam).
Dr. U. Rama Rao.
The Hon'ble Mr. N. Subba Rao.

2. *General remarks.*—The Hon'ble Mr. R. A. Graham doubts the necessity for the proposed legislation altogether: The Hon'ble Mr. M. E. Couchman prefers the Bill of 1915 to the Bill as now drafted. It seems obvious that the proposal to drop the legislation at this stage is impracticable. The Bill of 1915 necessarily needs revision if the conclusions reached at the Conference are to be embodied in the Bill.

P.T.S.—27-1-20.

3. *Amendments suggested to particular clauses of the Bill.*—These will be set out and discussed below :

W.A.K.—31-1-20.

Sectional notes below. I think it is obvious that the Bill must be proceeded with, especially in view of Mr. Ellis's remark, paragraph 9 of his letter, page 14 above.

E. S. LLOYD—10-2-20.

Yes. I should like to see a complete redraft in accordance with the orders on the sectional notes.

C. G. T[ODHUNTER]—12-2-20.

2. The provisions of this Act shall apply only to such mulgeni leases as fulfil the following conditions, namely,

(*a*) were granted or executed or came into existence prior to a date to be fixed in this behalf by the Governor in Council in respect of each taluk or other local area, Mulgeni leases to which the Act applies.

(*b*) in respect of which the relationship between mulgar and mulgenidar subsists on the date of the passing of this Act,

(*c*) do not expressly provide in writing whether in the original lease or in any other contract entered into before the

date fixed by the Local Government under sub-clause (*a*) for the contingency of the enhancement by Government of the land revenue assessment leviable on the land forming the subject of the lease; but no order or decree of a civil court passed before this Act comes into force shall operate to prevent the application of the Act to any such lease.

Clause 2 (*a*).—Mr Ellis (Collector of South Kanara) proposes that the following words may be added at the end of this sub-clause:—

'or which may hereafter be declared by a court to be mulgeni leases subsisting from a time prior to such date.'

From page 6 above, it will be seen that by the insertion of the words 'or came into existence' in the Bill as revised by him, the Honourable Member intended to provide for the class of cases referred to in the present amendment. The same expression, viz., 'which came into existence' was suggested by the Board in 1914 so as to bring *oral* leases within the scope of the Act. The expression was condemned by the Government 'as too vague' and as 'likely to raise doubts as to what was meant.' The words 'granted or executed' were finally approved and inserted in the Bill of 1915.

In paragraph 7 (*c*) and (*d*) of their memorial at page 3 of G.O. No. 2154, Revenue, dated 18th July 1912, the people of South Kanara referred to two classes of cases in which mulgenis came into existence by legal fiction, viz., (i) by prescription, i.e., the assertion of mulgeni right for the statutory period of 12 years; and (ii) by the decision of civil courts. There appears to be no objection to the addition suggested by Mr. Ellis, as it will clearly bring out all possible cases for which it is intended to provide in the Bill.

P.T.S.—3-2-20.

W.A.K.—31-1-20.

May be inserted I think.

E. S. LLOYD—10-2-20.

This is a matter of drafting. If the words 'or came into existence' cover the point sufficiently, there is no need to add to an already complex clause. The Advocate-General may be consulted.

C. G. T[ODHUNTER]—12-2-20.

Clause 2 (*b*).—Dr. U. Rama Rao desires to enlarge the scope of this clause so as to include

(i) cases where there has been a relinquishment by the mulgar of his interest before the Act, and

(ii) cases where there has been an assignment of the mulgar's interest before the Act, but there are outstanding claims in respect of assessment paid by the mulgenidar.

As regards (i) above, it is submitted that it is not the intention of Government to provide for cases in which the relation of mulgar and mulgenidar had ceased to subsist on the date of the passing of the Act (see clause 2 (*b*) of the Bill of 1915 and clause (*b*) on page 22 of G.O. No. 2979, Revenue, dated 9th October 1913.)

As regards (ii) above, it is submitted that it was not proposed to deal in this Bill with any claims other than those pending in civil courts at the time of the passing of the Act. No provision was intended to be made for the recovery of sums paid either by the mulgar or mulgenidar prior to the Act. The object was not to give the Act retrospective effect which would involve adjustment of accounts from the time of the settlement (1902 to 1905) up to the passing of the Act (vide paragraph 3 (*g*) on page 24 of G.O. No. 2979, Revenue, dated 9th October 1913).

W.A.K.—31-1-20.

Proposal No. 1 was already considered and negatived. Cases of the kind referred to in item (ii) cannot be many whether the period of limitation be six months under section 59, Revenue Recovery Act, or three years under the Limitation Act and do not call for special protection. The amendment suggested may therefore be vetoed

P. T. SRINIVASA ACHARI—3–2–20. E. S. LLOYD—10–2–20.

C. G. T[ODHUNTER]—12–2–20.

Clause 2 (*c*).—(1) Dr. U. Rama Rao desires that contracts entered into after the date fixed by the Local Government under sub-clause (*a*) should be *excluded*. The contracts referred to in clause 2 (*c*) must satisfy two conditions, viz., (i) they must have been entered into prior to a date fixed under clause (*a*); and (ii) they must contain no express provision in writing for the contingency of the enhancement. It will thus be seen that contracts entered into *subsequent* to the date fixed under clause (*a*) are already *excluded* by the Bill: Presumably Dr. Rama Rao merely means '*included*' where he says '*excluded*' and his intention is that *all* contracts referring to the contingency of enhancement should be respected and the Bill should not apply to such cases

Obviously.
P.T.S.—3-2-20

(2) On the other hand Messrs. Ellis and Couchman consider that some relief is necessary for the mulgar in cases where he has, under pressure, entered into an one-sided contract with his tenant and bound himself to make payments of assessment which under the Act he would not be required to do.

(*a*) Mr. Couchman suggests that *after* the words 'no order or decree of a civil court', the words 'or any other contract entered into between the parties' may be inserted.

(*b*) Mr. Ellis suggests *after* the same words the insertion of the following:—

'or any contract between the parties regarding payment of the new assessment made.'

The present clause (*c*) is the same as clause (*c*) of the Bill of 1915. Before that clause was drafted, the principle of respecting private contracts was sufficiently discussed. The fact was also before the Government that until the judgment of the High Court, dated 5th May 1910, became known to the people of South Kanara they had been in doubt as to the incidence of the increased assessment and entered into contracts as regards the payment of it. It is therefore for consideration whether all contracts respecting the enhanced assessment entered into before the passing of the Act should be respected as suggested by Dr. U. Rama Rao, or whether all such contracts should be over-ridden by the Act as suggested by Messrs. Ellis and Couchman. If the latter view prevails, it will be necessary to delete from sub-clause 2 (*c*) the words "entered into before the date fixed by the Local Government under sub-clause (*a*)" in addition to one or other of the amendments suggested of which that proposed by Mr. Ellis seems preferable.

W.A.K.—31–1–20.

Both the proposals seem open to objection. Dr. Rama Rao's proposal that all contracts should be respected would tell hard on those mulgars who have entered into contracts under the pressure of the decisions of the High Court and have thereby assumed a greater liability for the enhanced assessment than they would otherwise have done. The objection to the proposal of Messrs. Ellis and Couchman is the difficulty of differentiations between one-sided contracts and those that are bona fide.

The proviso under clause 7 (2) gives the settling officer power to override the principles therein laid down in deserving cases and apportion the enhanced assessment in accordance with equity. Where therefore he is satisfied that a strict adherence to the rules laid down by the Act will cause undue hardship and that the arrangement made between the parties is equitable he will doubtless give effect to that arrangement. No amendment seems called for.

P.T.S.—3–2–20.

As I understand the matter it was not intended to provide in the Act for cases where the parties have already made a settlement between themselves. Some of these may have been one-sided but it is doubtful if they should be referred. No amendment seems required.

E. S. LLOYD—10–2–20.

C. G. T[ODHUNTER]—12–2–20.

Definitions. 3. In this Act unless there is something repugnant in the subject or context

Mulgeni lease. (1) 'Mulgeni lease' means a perpetual lease of land whether written or oral under which a fixed rent, whether in money or kind or both, is reserved, and includes leases of the description known as 'kayamgeni', 'nigdigeni' and 'sub-mulgeni' but not 'walawarg'.

Mulgar. (2) 'Mulgar' means the lessor of land under a mulgeni lease and includes a mulgenidar who has granted a mulgeni lease to a sub-mulgenidar or sub-tenant:

Mulgenidar. (3) 'Mulgenidar' means a tenant of land under a mulgeni lease and includes a mortgagee in possession from such tenant.

Clause 3 (2)—Dr. U. Rama Rao urges as follows:—

(i) the definition of 'mulgar' requires amplification as the word 'lessor' would not include the assignee of the reversion.

(ii) the Act should make special provision for the apportionment of the enhancement between the lessee on the one hand and the sub-lessee or mortgagee on the other, so that the lessee may not be able to throw the whole liability on the sub-lessee or mortgagee.

As regards (i) above, it is submitted that the reversionary right of the mulgar, in the strict sense of the word 'reversion', is now a most unsubstantial right for which no provision need be made in the Bill (vide paragraph 2 of Mr. Graham's letter at page 13 of G.O. No. 2154, dated 18th July 1912). By the 'assignee of the reversion' Dr. U. Rama Rao apparently means only the 'assignee of all the interests of the mulgar'. Such an assignee virtually becomes the mulgar. If express provision is required to indicate him in the Bill, the words 'and his assigns' may be inserted in clause (2) of section 3 after the words 'lessor of land under a mulgeni lease'.

As regards (ii), it is submitted that the definition of 'mulgar' includes a "mulgenidar who has granted a mulgeni lease to a sub-mulgenidar or sub-tenant"; and similarly the definition of a 'mulgenidar' includes "a mortgagee in possession from a tenant of land under a mulgeni lease". A mulgenidar who tries to throw the whole liability on the sub-lessee or mortgagee ought to figure as a mulgar under the Act and the sub-lessee or mortgagee as the mulgenidar; the enhancement of the rent payable by the latter will be governed by the same rules as are applicable to original mulgars and mulgenidars. No special provision therefore seems called for.

P.T.S.—4–2–20.

W.A.K.—31–1–20.

The words 'the lessor of land under a mulgeni lease' in the definition of mulgar' are capable of being construed as referring to the person who originally granted the lease and as excluding his heirs and assigns. Similarly the words 'a mulgenidar who has granted a mulgeni lease to a sub-mulgenidar etc.' The definition may, it is submitted, be amended as under:—

"'Mulgar' means the lessor of land under a mulgeni lease, his heirs and assigns and includes a mulgenidar who has granted a mulgeni lease to a sub-mulgenidar or sub-tenant, his heirs and assigns."

As regards the definition of mulgenidar the words 'a tenant' seem to be sufficiently wide to include his heirs and assigns. However the matter may be made more clear by amending the definition as shown under:—

"'Mulgenidar' means a tenant of land under a mulgeni lease, his heirs and assigns and includes a mortgagee in possession from such tenant or from his heirs and assigns."

P. T. SRINIVASA ACHARI—4-2-20. E. S. LLOYD—10-2-20.

The Advocate-General may be consulted as to these amendments.

C. G. T[ODHUNTER]—12-2-20.

Application to enhance rent.

5. Any mulgar may make an application in writing to the Collector to make an order for the enhancement of the rent payable under a mulgeni lease of land of which he is the mulgar.

Such application must be made within six months from the date fixed in this behalf by the Governor in Council by a notification published in the official gazette. It shall be in such form as the Governor in Council may prescribe and shall be accompanied by such fees as may be fixed by the Governor in Council. Provided that the District Collector may, for special reasons to be recorded in writing, entertain any application presented after the date notified as above.

Clause 5.—MR. Ellis proposes to *substitute* the following for the existing proviso:—

"Provided that the Collector shall in cases in which the lease may hereafter be declared by a court to be a mulgeni lease and in other cases for special reasons to be recorded in writing may entertain any application presented after the date notified as above."

This is consequential on the amendment to clause 2 (*a*) which Mr. Ellis has suggested and will follow the orders passed on that amendment.

W.A.K.—31-1-20.

The clause is defective in that it does not say what the District Collector should do with the application entertained by him. If it is intended that he may either dispose of the application himself or forward it to the Collector for disposal the following may be added at the end of the clause:—

"The District Collector may deal with the application himself or transfer it to the Collector for disposal."

If the intention is that all original orders should be passed by the Collector himself, the following may be added:—

'He shall then forward the application to the Collector for disposal.'

The former course seems preferable. It is however for consideration whether it is necessary to insist on time-barred applications being presented to the District Collector and not the Collector himself in the first instance. The Collector who is given wide powers under the Bill can, it seems, be trusted to exercise his discretion properly in the matter of admitting such applications. In the amendment proposed by Mr. Ellis power is given to the *Collector* to entertain such applications. The amendment will need revision if they are to be entertained by the District Collector and if the District Collector is to dispose of them a few consequential amendments will be necessary in the other clauses of the Bill. These will be submitted after orders are passed on the note. The points for orders are—

(1) Whether the District Collector or the Collector is the authority that can entertain time-barred applications.

(2) If it is to be the District Collector, whether an exception may not be made in respect of cases where the delay has been due to the time taken by courts in deciding the nature of a lease and the Collector authorized to entertain applications presented after the due date in such cases.

[This is on the assumption that Government accept Mr. Ellis' proposal that the scope of the Bill should be extended to leases which may hereafter be declared by a court to be mulgeni leases subsisting from a time prior to the date mentioned in clause 2 (*a*).]

(3) Whether the applications entertained by the District Collector *should be* dealt with by himself, or *should be sent* to the Collector for disposal or whether the District Collector is to be allowed a discretion in the matter.

P. T. SRINIVASA ACHARI—4-2-20.

I doubt if there is any particular object in inserting the word 'District' Collector in the proviso. The word may be omitted. The District Collector can by executive orders require a reference to himself in such cases if necessary.

E. S. LLOYD—10-2-20.

I think the proviso is all right and I don't see that the District Collector's power of transferring an application to a subordinate for disposal is affected by it.

C. G. T[ODHUNTER]—12-2-20.

Principles on which enhancement is to be made.

7. If the Collector is satisfied that the mulgeni lease to which the application relates fulfils the conditions laid down in section 2 he shall make an order for the enhancement of the rent on such mulgeni lease in accordance with the following provisions:—

(1) Where the rent is payable wholly or partly in money such whole or part shall be enhanced by an amount equal or proportionate to the excess of the new assessment over the old.

(2) Where the rent is payable wholly or partly in kind so much of the increase in the assessment as relates to such whole or part, shall be divided between the mulgar and mulgenidar in the proportion borne by the new assessment to the old assessment on the land.

Provided that where good cause is shown for believing that such a division would be inequitable, the Collector may make the apportionment in accordance with general principles of equity, provided further that the increase in rent shall always be in money.

Clause 7.—This is the most important clause in the Bill laying down, as it does, the principles according to which the enhancement of rent should be made. Before setting out the drafting amendments suggested by some of the gentlemen consulted, a few *preliminary points* may be referred to. They are—

P.T.S.—4-2-20

(1) In sub-clause (2), the words 'old' and 'new' have been transposed. The mistake will be rectified.

(2) Mr. MacIver observes that provided (*a*) the outturn has remained the same, and (*b*) the Government take the same proportion of the net produce, the mulgar's share (rent *minus* assessment) remains the same whatever may be the rise in prices. The mulgar therefore requires no relief in cases where he receives *rent in kind.*

This remark need not be considered as the whole reason for the introduction of the Bill is that the Government under the settlement of 1902 took a considerably greater share of the net produce than under the settlement of 1819.

W.A.K.—31-1-20.

Clause 7 (2).—At page 5 above it was apparently decided at the conference that as regards rent paid in kind the enhancement would be divided in the proportion borne by the initial assessment to the final assessment, the former to be borne by the landlord the latter by the tenant. The draft Bill reverses the order. This is considered a mistake. As pointed out by Mr. Ellis, it was the intention that the tenant should bear the greater proportion. See also Mr. Couchman's note. The old assessment must be less than the new. If the proportion is 2 to 3 the mulgar will bear two-fifths of the enhancement the mulgenidar three-fifths. Assuming that it is decided that the mulgar shall bear the lesser share the words 'new' and 'old' must be altered into 'old' and 'new.'

E. S. LLOYD—10-2-20.

Yes. I wrote 'original' and 'final.'

C. G. T[ODHUNTER]—12-2-20.

Clause 7 (3).—Mr. MacIver next asks why, in the case of *rents in kind*, the additional assessment should not be divided in proportion to the benefits *recently* derived by each party from the land, as for example immediately before the settlement of 1902.

The answer to this is that the mulgenidars will object to such a division, for the mulgar will derive an undue advantage by being given a share in the improvements effected by the mulgenidars from the time of the grant. Vide in this connexion paragraph 5 of the notes of the conference.

W.A.K.—31-1-20.

Mr. MacIver's proposal will involve the determination of the net produce which for the reasons given by Mr. Couchman in his letter, dated 30th October 1912, is not quite practicable—paragraph 8 at pages 12 and 13 of G.O. No. 2979, dated 9th October 1913.

P. T. SRINIVASA ACHARI—4-2-20. E. S. LLOYD—10-2-20.

C. G. T[ODHUNTER]—12-2-20

Clause 7 (4).—Mr. Couchman considers that the provisions of the Bill are unsatisfactory because in cases where rent is paid wholly or partly *in kind*, no attempt is made to distribute the assessment in proportion to the benefits derived by each party from the land. This objection is met in paragraph 6 of Mr. Ellis' note on page 14 above. It has, moreover, been agreed at the conference that to ascertain what this benefit was exactly at the time of the original lease is practically impossible and that the distribution should therefore be made under some rule more or less arbitrary. The rule of proportion between the old assessment and the new has therefore been adopted in the Bill.

W.A.K.—31-1-20. P.T.S.—4-2-20.

The distribution must be arbitrary and no better rule can be devised.

E.S.L.—10-2-20. C. G. T[ODHUNTER]—12-2-20.

Clause 7 (5).—Messrs. Couchman and Graham point out that it will be impossible to distribute the assessment between the mulgar and mulgenidar in the manner proposed in the Bill, because

(i) the old assessment on individual fields cannot be ascertained, except in comparatively recent cases;

(ii) the figures entered as representing the old assessment are entirely imaginary the wargdar having occupied between the years 1819 and 1890 a good deal of land which he gave out on mulgeni lease and for which he paid no additional assessment to Government; and

(iii) the part of the holding for which cash rent was paid cannot be identified and distinguished from the part which paid rent in kind.

As regards objections (i) and (ii) it is submitted that, as observed by Mr. Ellis, it is not possible to satisfactorily meet these objections. A general rule has been laid down in clause 8 of the Bill which applies to cases where the initial assessment on individual fields is not known. Where the application of the rule will be inequitable, the only remedy is to deal with each case on its merits under the discretion vested in the Collector by the proviso to clause 7.

As regards objection (iii), it does not seem to matter whether the portions of the holding paying cash and grain rents respectively can be identified or not so long as the total enhancement of the cash portion of the rent can be determined proportionately to the excess of the new assessment over the old assessment and the enhancement in respect of the rent in kind can be worked out on the basis of the proportion between the old assessment and the new—vide paragraph 5 of Mr. Ellis' note on page 14 above.

W.A.K.—31-1-20.

P. T. SRINIVASA ACHARI—4-2-20. E. S. LLOYD—10-2-20.

C. G. T[ODHUNTER]—12-2-20.

Specific suggestions as to the amendment of clause 7 of the Bill.—May next be considered.

(i) Dr. U. Rama Rao suggests that the time from which enhancement of rent should take effect should be provided for and that it may be fixed as 'the tenancy year of the application'.

It is submitted that a provision of this kind is necessary. But it may be more appropriately inserted in clause 10 of the Bill. After the words 'or section 9 as the case may be' the words 'shall take effect from the beginning of the revenue year next after the final order or decision and' may be inserted. Cf. section 177 of the Estates Land Act, 1908. A decree for enhancement can ordinarily have no retrospective effect.

W.A.K.—31-1-20.

The final decision may take many years and it will be a hardship to the mulgar if the enhancement is to take effect as suggested in the office-note. Dr. Rama Rao's proposal that it should take effect from the revenue year in which application was made seems reasonable and may be accepted.

The date from which the revision of rent is to take effect may be put in as a separate section under section 10 so that it might apply not only to enhancement made with reference to the assessment fixed at the last settlement but also to revision of rent necessitated by future settlement for which provision is made in section 10.

P.T.S.—4-2-20. E.S.L.—10-2-20.

C. G. T[ODHUNTER]—12-2-20.

(ii) Messrs. MacIver, Lancashire and Ellis would recast all or some of the sub-clauses of clause 7 as follows:—

(*a*) Mr MacIver would substitute the following for clauses (1) to (3):—

(1) Where the rent is payable wholly in money the rent shall be increased by an amount equal to the increase in the assessment.

(2) Where the rent is payable wholly in kind the rent shall be increased so as to divide the additional assessment between the mulgar and the mulgenidar in the ratio borne by the old assessment to the new assessment.

(3) Where the rent is payable partly in money and partly in kind the ratio of the money rent to the rent in kind shall be ascertained and the additional assessment on the land shall be divided into two parts in the same ratio, and the part proportionate to the money rent shall be added to the money rent, and that proportionate to the rent in kind shall be dealt with as in clause (2).

(*b*) Mr. Ellis would substitute the following clauses (1) to (3):—

(1) Where the rent is payable in money it shall be enhanced by an amount equal to the whole of the excess of the new assessment over the old.

(2) Where the rent is payable in kind, the increase in the assessment shall be divided between the mulgar and the mulgenidar in the proportion borne by the old assessment to the new assessment over the land.

(3) Where rent is payable partly in money and partly in kind, the proportion that the money rent bears to the total rent shall be ascertained and the money rent enhanced by the same proportion of the increase in the assessment. The reminder of the increase in the assessment shall be apportioned by the Collector in accordance with the principle stated in sub-section (2)

Provided that where good cause is shown for believing that such a division would be inequitable and particularly where the increase in the assessment is due to an increase in the area assessed, the Collector may make the apportionment in accordance with general principles of equity, provided further that the increase in rent shall always be in money.

(*e*) Mr. Lancashire would replace existing sub-clause (2) by the following

(2) "When the rent is payable wholly or partly in kind, so much of the increase in the assessment as relates to such whole or part shall be borne by the mulgar and the mulgenidar dividing it in the proportion of the old assessment to the new assessment on the land by increasing the rent by an amount which bears the same proportion to the increase relating to such whole or part, as the new assessment bears to the sum of the old and new assessments on the land".

The opinion seems strong that it will make for clearness if (*a*) rent wholly in cash, (*b*) rent wholly in kind, and (*c*) rent partly in cash and partly in kind are dealt with in separate clauses. If it be decided to adopt that course, the clauses may be as suggested by Mr. Ellis.

W.A.K.—31-1-20.

The three classes of cases may be dealt with separately.

Mr. Ellis' draft is open to the objection pointed out by Mr. Lancashire in regard to the clause as drafted in the Bill.

In sub-section (2) and in the second sentence of sub-section (3) the principal verbs are 'shall be divided' and 'shall be apportioned' while the sub-sections are intended to deal with enhancement of rent not division of assessment. Mr. Ellis' amendment therefore needs revision.

Mr. Ellis proposes to retain the existing proviso with an amendment the object of which is to indicate that increase in assessment due to increase in area is one of the factors to be considered. He does not however put in the other equally important case, viz., of large areas of waste land leased for nominal rents. It would seem to be better to make mention of these cases in the statement of objects and reasons under the proviso. The amendment proposed by Mr. Ellis to the proviso may be omitted.

Page 14 of the note above. P.T.S.

In this case the mulgar should bear a larger proportion, P.T.S. and here the mulgenidar. P.T.S

Clause 7 begins with the words 'If the Collector is satisfied etc.,' which should properly speaking appear in clause 6 which deals with the determination of enhancement.

Clauses 6 and 7 may be amended as under:—

"Clause 6. On receiving an application under section 5 the Collector shall hold an enquiry and if he is satisfied that the mulgeni lease to which the application relates fulfils the conditions laid down in section 2, shall in accordance with the provisions of the next following section determine what enhancement, if any, shall be made in the rent payable in respect of the mulgeni lease."

"7. (1) Where the rent is payable in money it may be enhanced by an amount not exceeding the whole of the excess of the new assessment or the old.

(2) Where the rent is payable in kind the increase in the assessment shall be divided between the mulgar and mulgenidar in the proportion borne by the old assessment to the new assessment on the land and the rent enhanced by an amount equal to the mulgenidar's share of the increase in the assessment.

(3) Where rent is payable partly in money and partly in kind, the proportion that the money rent bears to the total rent shall be ascertained and the money rent enhanced by an amount not exceeding the same proportion of the increase in the assessment. The remainder of the increase in the assessment shall be apportioned in accordance with the principal stated in sub-section (2) and the mulgenidar's share shall be added to the rent. Provided that when good cause is shown for

believing that such a division would be inequitable the Collector may make the apportionment in accordance with general principles of equity, provided further that the increase in rent shall always be in money."

In section 7 (1) the words 'may' and 'not exceeding' have been substituted for 'shall' and 'equal to' with reference to the suggestion of the Government of India in their letter recorded in G.O. No. 2198, dated 29th September 1915. In consequence of this amendment the words 'an amount not exceeding' are inserted in sub-section (3).

P. T. SRINIVASA ACHARI—4-2-20.

The proposed amendment makes for clearness and may I think be approved but I am not sure that Mr. Ellis' proposed addition to the proviso should be omitted and merely drawn attention to in the statement of objects and reasons. Increase in area is a very important point to be considered—vide Mr. Graham's note supra, Mr. Ellis' proposed addition is of the words "as for instance when the increase in the assessment is due to an increase in the area assessed" and possibly may properly be inserted.

E. S. LLOYD—10-2-20.

As amended.

C. G. T[ODHUNTER]—12-2-20.

Mode of ascertainment of old assessment.

8. In cases in which the initial assessment on individual fields is not known, such assessment should be calculated by the Collector by apportioning the old assessment of the warg among the survey fields comprising it according to the proportion which the settlement assessment of each survey field bears to the settlement assessment of the whole warg.

Clause 8.—It is submitted for consideration whether for the word 'warg' occurring twice in this clause, the word 'Kudutala' will be substituted.

The old 'warg' extended over a number of villages and the new assessment varies in different villages according to locality, nature of soil, etc. A Kudutala is an individual holding which may be a warg or part of a warg. Whereas the old assessment on a Kudutala can be easily ascertained, the old assessment on a 'warg' cannot be ascertained. Please see in this connexion paragraph 7 of Board's Proceedings on page 18 of G.O. No. 2979, Revenue, dated 9th October 1913, and paragraph 3 (*d*) on page 23 of the same Government Order.

W.A.K.—31-1-20. P.T.S.—4-2-20.

Please see the references above noted. The point is for orders. 'Warg' is the more commonly used expression but Kudutala is the more exact it seems.

E.S.L.—10-2-20.

Why not 'holding'?

C. G. T[ODHUNTER]—12-2-20.

Appeal.

9. From every decision under section 6 by an officer other than the District Collector an appeal shall lie to the District Collector and from every decision of the District Collector under section 6 or section 7 an appeal shall lie to the District Court.

Enhancement of rent to remain in force until assessment is varied.

10. (1) The enhancement in rent determined under section 6 or section 7 or section 8 or section 9 as the case may be shall remain in force unless and until the assessment is varied, when on application made by the mulgar or the mulgenidar the Collector may direct such

further enhancement or such reduction as may seem equitable, having regard to the nature and extent of the variation in assessment.

(2) From every decision under sub-section (1) by an officer other than the District Collector an appeal shall lie to the District Collector.

Clauses 9 *and* 10:—(1) Dr. U. Rama Rao suggests that an appeal should lie to the District Court in *all* cases. The Bill, as drafted, does not provide for an appeal to the District Court in the class of cases contemplated by clause 10.

2) Mr. Ellis aims at the same point by the amendments he suggests. He wishes to transpose clauses 9 and 10, omitting sub-clause (2) of clause 10 and making some consequential amendments in the existing clause 9 (proposed clause 10). The clauses proposed by Mr. Ellis are as follow:—

9. The enhancement in rent determined under section 6 or section 7 or section 8 as the case may be—vide here the amendment suggested under clause 7 supra, i.e., the insertion of the words 'shall take effect from the beginning of the revenue year next after the final order or decision and'—shall remain in force unless and until the assessment is varied when, on application made by the mulgar or the mulgenidar, the Collector may direct such further enhancement or such reduction as may seem equitable having regard to the nature and extent of the variation in assessment.

10. From every decision under section 6 or section 7 or section 9 by an officer other than the District Collector an appeal shall lie to the District Collector and from every decision of the District Collector under section 6 or section 7 or section 9, an appeal shall lie to the District Court.

It may be noted that there is no provision in the above new clauses which correspond to 'or in section 9' in the existing sub-clause (1) of clause 10; i.e., the new clauses omit a reference to orders passed on appeal from the decisions under clauses 6, 7, or 8. To remedy this defect the words 'or in appeals therefrom' may be added after section 8 in clause 9 of Mr. Ellis' draft above.

The question whether an appeal should lie to the District Court in *all* cases is however one for orders. If it may, Mr. Ellis' draft may be accepted with the amendment suggested above.

W.A.K.—31-1-20.

E.S.L.—10-2-20.

Clauses 9 and 10 may be transposed as suggested above. They also need re-drafting for the following reasons.

Clause 9.—(i) The reference to the decision of the District Collector under section 6 is not correct because that section makes no mention of the District Collector.

(ii) There is no decision of the District Collector under section 7. In fact section 7 lays down the principles to be followed in arriving at a decision but the actual passing of the decision is under section 6.

(iii) It is not clear whether the appeal to the District Court is from the original order of the District Collector or from the order passed by him on appeal also.

Both I think.

E.S.L.—10-2-20.

A re-draft of the clause will be submitted after orders are passed on point (iii) above and also on the points raised regarding the jurisdiction of the District Collector.

Presumably the intention is that an appeal should lie to the District Court against every order of the District Collector whether original or passed on appeal.

As regards point (ii) above, viz., that there is no order of the District Collector under section 7, it is submitted that, the Honourable Member originally intended that the power conferred by the proviso under the section should be exercised by the into District Collector but in the draft Bill the words 'District Collector' were

corrected 'Collector'. Consequent amendment was not made in clause 9 and this accounts for the erroneous reference in clause 9 to the order of the District Collector under clause 7.

Clause 10.—This clause refers to the enhancement in rent determined under "section 6 or section 7 or section 8 or section 9."

As already pointed out the enhancement is determined under section 6 and not under section 7 which lays down only the guiding principles: so the reference to section 7 seems incorrect. Then again section 8 does not deal with the enhancement of rent but with the apportionment of old assessment of the warg among the survey fields comprising it.

P. T. SRINIVASA ACHARI—4-2-20. E. S. LLOYD—10-2-20.

I think it is sufficient to give one appeal in each case.

C. G. T[ODHUNTER]—12-2-20.

Reference to Collector of pending proceedings in Civil Courts by mulgenidars for the recovery of sums paid in consequence of increase of assessment.

11. From and after the date fixed in the notification issued under section 5 no suit shall lie by any mulgenidar for the recovery of any sum paid in consequence of the increase in assessment and all such suits or proceedings as are pending in the Civil Courts on the date above referred to shall be referred by the courts concerned to the Collector for disposal under this Act.

Clause 11.—(1) Dr. U. Rama Rao suggests that provision should be made in the Bill authorizing the Collector to exercise his powers under section 7 in connexion with cases transferred to him under this clause.

It is submitted that this suggestion relates to the procedure to be followed by the Collector in the discharge of a duty imposed on him under the Act. Provision has already been made for this in sub-clause (4) of clause 12 of the Bill.

W.A.K.—31-1-20.

I submit there is some force in Dr. U. Rama Rao's argument. His point is that the Collector can take action only on application from the mulgar (section 5) and unless there is a special authorization to that effect he is precluded from taking action on proceedings referred to him by the court. The following words may be added at the end of the section:—

"The Collector shall thereupon proceed as if an application had been made to him under section (5)."

P.T.S.—4-2-20. E.S.L.—10-2-20.

C. G. T[ODHUNTER]—12-2-20.

(2) Dr. U. Rama Rao suggests also that, in order to carry out the object in view, the enhancement ordered in the pending cases transferred to the Collector "should be given retrospective effect so as to apply to the period to which the claim relates

Pending suits must be either—

(*a*) suits filed by the *mulgar* by virtue of the terms of the lease enabling him to recover the excess assessment from the mulgenidar; or

(*b*) suits filed by the *mulgenidar* to recover from the mulgar, under section 35 of Act II of 1864, the assessment on the land paid by him to Government on behalf of the mulgar

It would seem that in both these cases the Collector must proceed to decree the claim as if he were a civil court under the general law as it stood at the time of the institution of the suit. All that clause 11 of the Bill does is to merely change the forum and avoid dual jurisdiction after the Act comes into force. Rules as to how the Collector should proceed in these cases may be provided for under clause 12 (4) of the Bill

W.A.K.—31-1-20.

The date of transfer may be regarded as the date of application in which case the enhancement will take effect from the revenue year in which the transfer was made if my suggestion that enhancement may take effect from the revenue year in which application was made is approved.

P. T. SRINIVASA ACHARI—4-2-20. E. S. LLOYD—10-2-20.

C. G. T[ODHUNTER]—12-2-20.

(3) Dr. U. Rama Rao wants also that the tribunal created by the Bill should act as a court of reference to which civil courts may in any suit pending before them make a reference about a particular issue, if that issue happens to be one relating to the question of enhancement of rent by apportioning the increased assessment between the mulgar and the mulgenidar. It is not clear what cases Dr. U. Rama Rao has in mind. They are perhaps cases arising out of mortgages. Whatever they may be, the suggestion seems to be one which goes beyond the scope of the present Bill.

W.A.K.—31-1-20.

What Dr. Rama Rao means apparently is that the suits and proceedings before civil court might involve other issues also and that in such cases the court should try those other issues and refer to the Collector only the issue regarding the recovery by the mulgenidar of the enhanced assessment paid by him. For instance the mulgenidar in his plaint avers that the lease is a mulgeni lease, that he paid the assessment owing to the default of the mulgar and that he is entitled to recover it. The mulgar contends that the lease is not mulgeni but chalgeni. The nature of the lease will be one of the issues in the case which the civil court must try. As regards the amount sought to be recovered the court is competent to adjudicate upon so much of the claim as relates to the old assessment and it is the claim in respect of the excess of the new assessment over the old that the court is precluded from trying and that should be referred to the Collector. To make the point clear clause (11) may be amended as under :—

" 11. From and after the date fixed in the notification issued under section 5 no suit shall lie by any mulgenidar for the recovery of any sum paid in consequence of the increase in assessment and all suits or proceedings pending in the civil courts on the date above referred to in so far as they relate to the recovery of any such sum shall be referred by the courts concerned to the Collector for disposal under the Act."

P.T.S.—4-2-20. E.S.L.—10-2-20.

C. G. T[ODHUNTER]—12-2-20.

12. The Governor in Council may (after previous publication) make rules consistent with this Act :— **Power to make rules.**

(1) fixing the date specified in section 2;

(2) prescribing forms and the mode of service of notices under this Act;

(3) fixing the fees, costs and charges to be paid in respect of proceedings under this Act;

(4) prescribing the procedure to be followed by the Collector in the discharge of any duty imposed on him by or under this Act;

(5) providing for commutation and apportionment under section 7 (2);

(6) generally for carrying out the purposes of this Act.

Clause 12.—Mr. MacIver suggests that, in sub-clause (5) of clause 12, 'section 7' may be substituted for 'section 7 (2)'. As *rent in kind* is referred to in sub-clause (1) as well as sub-clause (2) of the existing clause 7, commutation will be

necessary under both the sub-clauses. The suggested amendment may, it is submitted, be carried out unless it be decided to split up the existing two sub-clauses of clause 7 into three as suggested in which case, it will be necessary to refer only to the two sub-clauses (2 and 3) which will refer to rent paid wholly or partly in kind.

P.T.S.—4-2-20.

W.A.K.—31-1-20.

In sub-clause (4) the words 'or the District Collector' may be inserted after the word 'Collector.'

P. T. SRINIVASA ACHARI—4-2-20. E. S. LLOYD—10-2-20.
C. G. T[ODHUNTER]—12-2-20.

2. In S.A. No. 229 of 1907 a Full Bench of the High Court of Madras has decided that when the *mulgar* or *mulgeni* landlord is the registered pattadar, a mulgeni tenant who has paid the assessment on his lands in order to release them from attachment and prevent their sale is entitled under section 35 of the Madras Revenue Recovery Act, 1864, to deduct such payments from the rent due to his landlord under the terms of the lease. As the law stands, therefore, the whole burden of the increased assessment must be borne by the *mulgeni* landlord, who is the registered holder. The position of the majority of the *mulgeni* landlords is thus a difficult one. They are responsible for the payment of an assessment which bears no relation to, and is often considerably in excess of, the rents reserved in their leases, and they are powerless to alter those rents.

Paragraph 2 of Statement of Objects and Reasons.—(1) Mr Lancashire suggests that the words 'and is sometimes even in excess of the rents accrued in their leases' may be substituted for the words 'and is often considerably in excess of the rents reserved in their leases'. His reason is that the former expression implies that the hardship is more severe than is actually the case and such cases are besides rare.

It is submitted that the amendment suggested may be carried out, but the word 'accrued' may be replaced by the word reserved'

P.T.S.—4-2-20.

W.A.K.—31-1-20. E.S.L.—10-2-20.
C. G. T[ODHUNTER]—12-2-20.

4. The scheme of the Bill is to enable landlords whose lands were leased on *mulgeni* tenurss before the recent settlement to apply to the Collector to enhance the rent payable on the lands by an amount not exceeding the difference between the old and the new assessment. The method proposed for the distribution of the increase is the most equitable that can be arrived at in view of the difficulty of assessing the benefit derived by either party from the land at the time of the settlement of 1819.

Paragraph 4 of Statement of Objects and Reasons.—(2) Mr. Lancashire suggests that for the words 'difficulty in assessing the benefit derived by either party from the land at the time of the settlement of 1819', the words 'difficulty in assessing the benefit derived by either party from the land at the time the mulgeni lease was originally granted' may be substituted. His reason is that the majority of the leases in existence are very likely to be those granted between 1819 and 1902. This suggestion may also be accepted.

P.T.S.—4-2-20.

W.A.K.—31-1-20 E.S.L.—10-2-20
C. G. T[ODHUNTER]—12-2-20

Clause 7 which deals with the principles on which rents are to be enhanced derives origin from the judgment of the High Court in S.A. No. 582 of 1908 in which Justices Miller and Sankaran Nair laid down the following principles :—

"The theory of enhancement being that the Government takes a share of the increased value of the produce due to increase in prices, it would follow that prima facie the tenant should pay the enhanced assessment if he paye fixed a money rent to the landlord. But where, as here, the rent is paid in kind or partly in kind, so that both the landlord and the tenant lose a proportion of the increased value of the produce, it seems equitable that the enhanced payment should be shared between them, the landlord paying that proportion of the increase which is equal to the proportion which he receives of the produce : in other words each party should pay in this, as in other cases, in proportion to the benefit he derives from his interest in the land."

The application of the general principle in cases where the rent is payable in kind wholly or in part will involve some difficulty. The exact proportion of the benefit derived by the mulgar and the mulgenidar at the time the mulgeni lease was originally granted is not ascertainable in most cases at this distance of time. Any principle of apportionment that may be adopted must therefore be more or less arbitrary. As the benefits arising from enhanced prices and other causes were taken into consideration in fixing the assessment at the resettlement it is proposed to apportion the enhancement between the mulgar and the mulgenidar in the proportion which the original assessment bears to the final assessment on the land. To provide for hard cases it is proposed to invest the Collector with discretion to intervene and make an equitable settlement in cases to which the arbitrary rule is not fairly applicable.

Clause 10.—Subsequent to the decision of the High Court above referred to, many *mulgeni* tenants have brought suits to recover sums which they have paid in discharge of the assessment in excess of their rents. It is not considered necessary to give the Act retrospective effect so far as closed transactions are concerned; but to avoid inconsistency and the possibility of double remedies it is thought desirable to provide that all such suits and appeals pending at the time of the notification issued under section 5 of the Act shall be referred to the Collector for disposal under the Act.

With reference to the suggestion that increase in assessment due to increase in area and the leasing of large area of waste on nominal rents may be mentioned in the Statement of Objects and Reasons as instances where considerations of equity may necessitate a departure from the rules the following amendment is submitted for approval.

For the last sentence of sub-paragraph 3 *substitute* the following:—

"To provide for hard cases as, for instance, where the increase in assessment is due to increase in area or where large areas of waste land were leased out for nominal rents, it is proposed to invest the Collector with discretion to intervene and make an equitable settlement in cases to which the arbitrary rule is not fairly applicable."

P. T. SRINIVASA ACHARI—4-2-20.

May be approved whether any addition is made to the proviso or not

E. S. LLOYD—10-2-20.

C. G. T[ODHUNTER]—12-2-20.

A revised draft Bill, with a revised Statement of Objects and Reasons, is submitted with reference to the Honourable Member's order on page 15 above. The notes under clauses 5 and 8 of the revised draft are for orders.

2. A draft official memorandum to the Advocate-General is also submitted with reference to the Honourable Member's orders.

W.A.K.—19-2-20 P.T.S.—20-2-20.

Issue official memorandum.

After issue Honourable Member for perusal of the revised draft Bill.

E.S.L.—22-2-20.

C. G. T[ODHUNTER]—23-2-20.

Demi-official—from R. H. ELLIS, Esq., I.C.S., Collector of South Kanara.
To—the Hon'ble Mr. E. S. LLOYD, I.C.S., Acting Secretary to Government, Revenue Department.
Dated—Camp Udipi, the 15th March 1920.

In continuation of my demi-official No. 187-D., Revenue, dated 17th January 1920, I have a few remarks to add regarding section 8 of the proposed Mulgeni Rent Enhancement Bill.

I find that in some cases the mulgars and mulgenidars when settling the terms of the mulgeni leases have already arrived at an agreement as to the amount of the old '*sarasari*' assessment which is to be apportioned to the land leased. Provision should, I think, be made in the section that in such cases the arrangement arrived at between the parties must be adhered to. I also find that in other cases for purposes of calculating increment remission the Settlement officer has already calculated the amount of the old assessment leviable upon the mulgeni holding. It should be made clear that where this has already been done the Collector is not required to make the calculation afresh.

Please see the demi-official from the Collector of South Kanara above. Clause 8 of the draft Bill makes provision for the ascertainment of the initial assessment on a field in cases where such assessment is not known. The two classes of cases to which Mr. Ellis refers in his demi-official are cases in which the initial assessment is known. Clause 8 of the Bill will not therefore apply to them. The clause does not appear to require revision.

W.A.K.—20-3-20. P. T. SRINIVASA ACHARI—20-3-20.

Point this out to the Collector and ask if he still thinks any alteration necessary.

E. S. LLOYD—25-3-20.

The following demi-official is submitted for approval.

K.R.—26-3-20. W.A.K.—29-3-20. P.T.S.—29-3-20. E.S.L.—8-4-20.

Demi-official—from the Hon'ble Mr. E. S. LLOYD, I.C.S., Acting Secretary to Government, Revenue Department.
To—R. H. ELLIS, Esq., I.C.S., Collector of South Kanara.
Dated—the 8th April 1920. *No.*—820-B/19-7.

With reference to your demi-official, dated 15th March 1920, suggesting that clause 8 of the Mulgeni Rent Enhancement Bill may be amended so as to exclude cases in which the apportionment of the old assessment on individual fields has already been made either by agreement between the mulgar and the mulgenidar or by the Settlement officer in connexion with increment remission, I am to state that the clause in question makes provision only for cases in which the initial assessment on survey fields is *not known*. The two classes of cases to which you refer seem to be cases in which the initial assessment is known and clause 8 of the Bill will not therefore apply to them. I am to inquire whether you still consider any alteration necessary.

Demi-official—from the Collector of South Kanara.
To—N. E. MARJORIBANKS, Esq., I.C.S., Temporary Additional Secretary to Government, Revenue Department.
Dated—the 18th April 1920. *No.*—Dis. 1093-D.

In reply to your demi-official No. 820-B/19-7, dated the 8th April, regarding the Mulgeni Rent Enhancement Bill I should like to point out that I was careful in my letter of 15th March to refer not to the assessment on individual fields but to the assessment on the mulgeni holding. My point is that although the assessment on the mulgeni holding may have already been settled between the parties themselves or by the Settlement officer the assessment on individual fields is still not fixed and that therefore in spite of the existing arrangement the Collector would be compelled under clause 8 as it stands at present to go into the calculation afresh in accordance with the method now laid down and would probably arrive at a different conclusion and have to upset the existing arrangement. In the two classes of case which I contemplate the assessment on individual fields is not known and clause 8 would, I believe, apply.

From the Advocate-General, Opinion No. 448, dated 27th April 1920.

The Advocate-General has replied to Official Memorandum, dated 22nd February 1920. The Collector of South Kanara has also replied to the demi-official at page 29 above. The following remarks are submitted :—

Paragraph 1 of the Advocate-General's letter (clause 2 (a) of the Bill).—The Bill is intended to apply even to cases of mulgeni leasehold rights acquired by adverse possession. The definition of the words 'mulgeni lease' as including oral leases—expressed or implied—and the words 'came into existence' and 'which may hereafter be declared by court are sufficient to cover all possible cases. Attention is invited to the notes on pages 15 and 16 supra. However as the matter is one of mere drafting, the amendment suggested by the Advocate-General may be accepted.

P.T.S.—12-5-20.

In order to provide for cases of adverse possession the Advocate-General would alter 'leases' into 'tenures' and 'granted' into 'created' or 'acquired.' There would seem to be no objection.

He would apparently omit the words in italics in clause 2 (*a*) of the Bill.

E.S.L.—12-5-20.

C. G. T[ODHUNTER.]—15-5-20.

Paragraph 2 of the Advocate-General's letter (clause 2 (b) of the Bill).—Clause 2 (*b*) was intended to exclude cases where mulgars, as a consequence of the decision of the High Court, have surrendered their rights. In view of clauses 5, 9 and 10, the provision may not be quite necessary because obviously on the date of application the applicant must be a mulgar and the relationship should continue till the order of enhancement takes effect. However the provision makes for clearness and may remain.

P. T. SRINIVASA ACHARI—12-5-20.

As the Advocate-General does not think the clause required, it may perhaps be omitted.

E. S. LLOYD—12-5-20.

C. G. T[ODHUNTER]—15-5-20.

Paragraph 3 of the Advocate-General's letter (clause 2 (c) of the Bill).—The reason why contracts entered into subsequent to the date of jamabandi, which is the date contemplated in the Bill; are not saved is that they were entered into at a time when the Civil Courts were generally inclined to the view that the enhancement should be borne by the mulgar. Such contracts would be one-sided having in all probability been entered into by mulgars under the pressure of Civil Courts' decisions. The Advocate-General seems to be under the impression that the provision is intended for the protection of the mulgenidars, whereas it is meant more for the protection of mulgars than mulgenidars. The Advocate-General may be informed accordingly.

P.T.S.—12-5-20.

I think so.

E.S.L.—12-5-20.

C. G. T[ODHUNTER]—15-5-20.

Paragraph 4 of the Advocate-General's letter (clause 3 of the Bill).—The Advocate-General may be asked to draft a definition of the expression 'mulgeni tenure.' In the definition of mulgar and mulgenidar the word 'representatives' may be inserted after the word 'heirs' as suggested by the Advocate-General.

E.S.L.—12-5-20.

P.T.S.—12-5-20.

As the Advocate-General does not like the word 'leases', he may be asked to define mulgeni *tenure*, mulgar and mulgenidar respectively.

E.S.L.—12-5-20.

C. G. T[ODHUNTER]—15-5-20.

Paragraph 5 of the Advocate-General's letter (clause 4 of the Bill).—The amendment to clause 4 may be accepted and the words 'by the Act' inserted between 'Collector' and 'upon.'

P.T.S.—12-5-20. E.S.L.—12-5-20.

C. G. T[ODHUNTER]—15-5-20.

Paragraph 6 of the Advocate-General's letter (clause 5 of the Bill).—The Advocate-General suggests that sub-paragraph 2 of clause 5 should be omitted. He is of opinion that in a large number of cases the nature of the tenure will have to be settled by Civil Courts and consequently there is no advantage in fixing any period of limitation for the filing of applications. He thinks that it is to the interest of the mulgar to apply for relief as promptly as possible. It is not clear why the Advocate-General considers that disputed cases would be numerous. There appears to be one distinct advantage in fixing the period for putting in applications, viz., that all cases requiring settlement will be brought to the notice of the Collector within the time prescribed. Then the Collector can at once deal with cases in which the existence of the tenure is admitted. Where a dispute as to tenure is raised, the Collector will refer the parties to a Civil Court and no separate provision as to reference to Court seems necessary for this purpose (as the Advocate-General appears to think) so long as the Bill does not oust the jurisdiction of Courts in such matters. The admission of applications presented after the prescribed date owing to the question of tenure having been pending before Courts is provided for in clause 5 of the Bill as drafted.

If the Civil Court decides the nature of the tenure and the exact date of its acquisition, the Collector will act upon the decision. If on the other hand the Civil Court merely declares the nature of the tenure and does not fix the date of its acquisition, the Collector will do this under clause 6. The Advocate-General may be informed that Government consider it necessary to retain the clause as it is.

P. T. SRINIVASA ACHARI—12-5-20.

I am inclined to agree with this view. The sub-clause may be retained.

E. S. LLOYD—12-5-20.

I agree. The legislation is designed to deal with a special set of circumstances and we must have some finality.

C. G. T[ODHUNTER]—15-5-20.

Paragraph 7 of the Advocate-General's letter (clause 7 of the Bill).—The Advocate-General's suggestions may be accepted.

P.T.S.—12-5-20.

If this is considered necessary the terms old and new assessment may be defined in clause 3. The other suggestions may be accepted.

E.S.L.—12-5-20.

I don't think the clause will make sense with the words 'for believing' omitted. Otherwise I agree.

C. G. T[ODHUNTER]—15-5-20.

Paragraph 9 of the Advocate-General's letter (clause 11 of the Bill).—The Advocate-General assigns no reasons for his suggestions. Clause 11 may stand as drafted.

P.T.S.—12-5-20.

This is for orders. Possibly it would be best to make decisions appealable to the District Court in all cases.

E.S.L.—12-5-20.

I think I would let the clause stand.

C. G. T[ODHUNTER]—15-5-20.

Paragraph 10 of the Advocate-General's letter (clause 12).—The Advocate-General is labouring under a certain amount of misconception in thinking that the date fixed in the notification under section 5 may sometimes be in 1902. The date in the notification is the date from which the period of six months should be calculated and must be some date after the passing of the Act. It can never be 1902. As regards pending suits, they must be suits by mulgenidar against the mulgar. There can be no pending suit by the mulgar because before the passing of the Act the legal liability to pay the assessment was upon the mulgar. As the principle underlying the Bill is that the major portion of the enhanced assessment should be borne by the mulgenidar, the hardship that the mulgenidar will suffer by his being deprived of the claim in regard to past payments would be inappreciable. The clause does not affect execution proceedings, that is to say proceedings for the execution of decrees *already passed.* The clause does not seem to require any revision.

P.T.S.—12-5-20.

The Advocate-General's difficulty seems to be this. On transfer of a suit to the Collector he will proceed *as if* an application had been made under section 5, but the date of the suit may be much previous to the date fixed by notification under that section. He can only revise the rent from the date of the transfer. What becomes of the claim for the intermediate period. It would apparently have to be cancelled. Can this be done?

E.S.L.—12-5-20.

Explain to the Advocate-General exactly what it is we want to achieve and ask him to draft.

C. G. T[ODHUNTER]—15-5-20.

In his demi-official at page 29 ante, Mr. Ellis explains that his demi-official dated 15th March 1920 referred to cases in which assessment on mulgeni *holdings*, as distinguished from *individual* fields, is known. Mr. Ellis' point is not intelligible.

If the assessment on the entire mulgeni holding is known, it has only to be apportioned among the fields comprising it in the ratio of the settlement assessment of each field to the settlement assessment on the holding. This is exactly what clause 8 requires.

P. T. SRINIVASA ACHARI—12-5-20.

This seems correct. If the individual assessment is not known it must be calculated as provided for in the Bill.

E. S. LLOYD—12-5-20.

Mr. Ellis' point seems to me to be a good one. Clause 8 refers to 'cases in which the assessment on individual fields is not known'. There may be cases in which arrangements for distributing the assessments on holdings have been arrived at, but on a basis different to that suggested in clause 8. These could not be treated as cases in which the assessment on individual fields was known and the Collector might therefore be compelled to apply a mode of apportionment different to that already applied by the parties themselves. The point may be sent to the Advocate-General.

Remarks on the above lines may be communicated to the Advocate-General whose offer to redraft the Bill may be accepted.

C. G. T[ODHUNTER]—15-5-20.

Will Mr. P. T. Srinivasa Achari draft please?

E.S.L.—17-5-20.

Draft official memorandum to the Advocate-General is submitted for approval.

P.T.S.—18-5-20. E.S.L.—19-5-20.

Issued as Official Memorandum No. 820 B/19-9, dated 19th May 1920.

Opinion of the Hon'ble the Advocate-General, dated 25th May 1920.

The Mulgani Rent Enhancement Bill, revised in accordance with the Advocate-General's opinion is submitted. If the Bill, as revised, is approved, it may be transferred to the Legislative Department for further action, which is (i) to publish the Bill under Rule 33 of the Business Rules and (ii) to address the Government of India (Legislative Department) and the Secretary of State with reference to clauses (1) and (2) of Instruction 2 on page 118 of the Legislative Council Manual. With reference to instruction 1 (4) on page 118 of the Manual, the Legislative Department may inform the Government of India that the Executive Department concerned of the Government of India has not been addressed in this case as to the policy of the Bill, as the policy has already been approved by the Government of India in the Department of Revenue and Agriculture in their letter No. 1037-2402, dated 2nd September 1915, and that the immediate introduction of the Bill in the Local Council was then deferred, as advised by the Government of India, until after the war (page 2 of G.O. No. 2198, Revenue, dated 28th September 1915).

2. If the Bill is dealt with in the usual course, a period of two months shall have to elapse between the date when it is forwarded to the Secretary of State and the date of its introduction in the Council. In Mr. P. T. Sreenivasa Achariyar's note on page 10 of Lodged No. 3926 D and 4043 D of 1919, dated 7th April 1920, it was suggested, however, that the Bill might be dealt with as an urgent measure under Instruction 5 (*d*) on page 120 of the Legislative Council Manual. The Honourable Member's remarks on page 13 of the same paper left this point for future consideration. If it be decided to proceed with the Bill under Instruction 5 (*d*), Legislative may be informed that the reason for the urgency has already been intimated to the Government of India in this Government's letter No. 1438-A., dated 16th June 1915, and that the lapse of time since has not tended to ease the situation in South Kanara as no *modus vivendi* has been arrived at in the interval between the mulgars and the mulgenidars and that there has been a loud demand for this legislation from the public of South Kanara. For orders.

W.A.K.—26-5-20. J. B. BROWN—27-5-20.

Please see the Advocate-General's opinion and the Bill as corrected in accordance therewith. The only possible omission I note is that he has not defined 'old and new assessment'. It is for orders if this is necessary. Perhaps not.

The Bill may now be sent to Legislative for further action. With reference to the remark in the office-note above, I do not see how it is possible to treat it as an urgent measure. I think it should be reported to the Secretary of State and the ordinary two months allowed. It can still be introduced in the present Council.

E. S. LLOYD—28-5-20.

I have made an addition to the preamble to explain what is meant by the 'old' and 'new' assessment respectively.

2. In clause 10 it is not clear whether the revision of rent is to take effect from the beginning or the end of the revenue year. I have made it at the beginning.

3. I don't quite understand the Advocate-General's remarks on clause 12. I have, however, amended the clause to the effect that the date of plaint should be treated as the date of application. This seems to be better than providing that revision of rent is to take effect from date of transfer.

4. I have made some corrections in the Statement of Objects and Reasons.

5. The usual letters to the Government of India and the Secretary of State should be got off at once and I think we might ask them specially to let us know early whether there is any objection to our proceeding with the Bill, as we must bring it in by the August meeting at the latest.

6. Please send me a clean proof of the Bill as early as possible and have the whole file printed up. The matter has gone through so many changes that I am not sure we may not have slipped into errors in one or two places.

C. G. T[ODHUNTER]—29-5-20.

Draft sharp.

E.S.L.—29-5-20.

With reference to paragraph 5 of the Honourable Member's remarks above, a draft order and a draft letter to the Government of India (Revenue and Agriculture) are submitted for approval.

On receipt of the Government Order with notes, Legislative will, in the usual course, address the Secretary of State and the Government of India, Legislative Department, and also take steps to publish the Bill in time for its introduction at the Legislative Council meeting in August 1920; and to secure this object, Legislative will no doubt instruct the Superintendent, Government Press, to publish the Bill and its translations * as a special supplement to the *Fort St. George Gazette*, if necessary.

Kanarese is the language of the district. Perhaps Legislative will publish in Malayalam as well, as Malayalam is spoken in the Kasaragad taluk.

2. After issue of the Government Order and the letter, the file will be printed up very urgently at the Government Press, Madras, and clean proofs of the Government Order and the Bill will be called for urgently, i.e., within a week.

Yes.

J.B.B.—1-6-20.

N.K.—31-5-20. W.A.K—31-5-20.

J. B. BROWN—1-6-20.

E.S.L.—1-6-20.

[G.O. Nos. 1245-46, Revenue, dated 1st June 1920.]

With reference to paragraph 6 of the Honourable Member's note above, a proof copy of G.O. No. 1254, Revenue, dated 1st June 1920, is submitted, which contains a copy of the Bill with the Statement of Objects and Reasons—vide pages 23 to 27 of the Government Order.

N.K.—16-6-20. W.A.K.—16-6-20.

This is not a very clean proof: but as the type stands in Madras I submit it for circulation in order to avoid delay.

J.B.B.—16-6-20. E.S.L.—17-6-20.

I have made a few slight corrections which may be carried out in the proof.

I hope the Bill will be published as soon as legislative formalities permit.

C. G. T[ODHUNTER]—20-6-20.

E.S.L.—21-6-20.